REGISTERED No. D. [illegible]

The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

'o. 113] NEW DELHI, THURSDAY AUGUST 7, 1952

MINISTRY OF LABOUR

NOTIFICATION

New Delhi, the 30th July 1952

S.R.O. 1351.—In pursuance of section 17 of the Industrial Disputes Act, 1947 IV of 1947), the Central Government hereby publishes the following award of Industrial Tribunal, Calcutta in the dispute between Messrs. Assam Oil —ompany and their contractors on the one hand and their workmen on the other.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

20/1, GURUSADAY ROAD, BALLYGUNGE, CALCUTTA-19

REFERENCE No. 2 OF 1951

Before Shri K. S. Campbell-Puri, B.A., LL.B., *Chairman*

PARTIES:

Messrs. Assam Oil Company Ltd., Digboi and their Contractors

And

Their Workmen

APPEARANCES:

Shri S. K. Basu, Advocate, instructed by Shri S. K. Pramanik, Mvi. H. U. Ahmad and Mvi. A. U. Ahmad for Assam Oil Company Labour Union and Assam Oil Company Contractors Labour Union, Digboi.

Shri S. C. Sen with Shri J. K. Ghosh of Orr Dignam & Co., Solicitors, for Assam Oil Company Ltd., instructed by Mr. S. T. Glover and Mr. W. W. Brooks, officers of the Company,

Shri N. M. Das Gupta, Advocate, for the Contractors Association, Digboi.

AWARD

By a Notification No. LR-2(310), dated 8th March 1951, Government of India in the Ministry of Labour referred an industrial dispute between Messrs. Assam Oil Company and their contractors on the one hand and their workmen on the other to this Tribunal for adjudication. The points of dispute were, however, not specified in any Schedule and it was only stated that 'whereas an industrial dispute has arisen between the aforesaid parties, the Central Government considers it desirable to refer the said dispute for adjudication and the same is

referred to the Industrial Tribunal, Calcutta, constituted under section 7 of the Industrial Disputes Act, 1947 in exercise of powers conferred by clause (c) of sub-section (1) of section 10 of the Act.'

The absence of schedule was noted before the issue of notice to the parties concerned, but it was not deemed necessary to take exception to the procedure adopted by the Government of India inasmuch as the powers of the appropriate Government under section 10, sub-section (c) appear to be very wide. The main factor for the purpose of making reference is the existence of an industrial dispute, and it is nowhere specifically stated in the section that certain points or issues be specified. I am aware, of course, of one decision of the High Court of Madras with regard to a general reference of unspecified dispute. That was a reference made in the matter of disputes relating to various engineering firms and type foundaries of the whole province of Madras and its validity was questioned in the High Court. It was held that under section 10 the Government must have reason to believe that a definite dispute has either existed or was apprehended. As the order of reference was to the effect that the industrial dispute had arisen between the workers and the management of certain engineering firms and type foundaries in the province of Madras and industrial disputes were also apprehended in the rest of the engineering firms in respect of certain matters; not specified, the reference was held invalid. Obviously, many engineering firms and type foundaries were involved in that case which were not named. But in this case of 'Assam Oil Company' the Reference is in clear terms that a dispute exists between the Assam Oil Company and its contractors on the one hand and their workmen on the other, and the Government of India consequently referred the dispute to this Tribunal for adjudication. The Madras High Court decision accordingly is not in point and is clearly distinguishable. On the point of specification of items, it was thought only desirable and not obligatory, and this observation moreover was made in passing, while the reference was held invalid for want of definite disputes amongst the various Engineering firms, which factor is amply satisfied in this case. An amendment in this respect of course, has since been made by Industrial Disputes (Amendment) Act, 1952 wherein the following sub-section has been inserted:—

> 3(4) "Where in an order referring an industrial dispute to a Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Tribunal shall confine its adjudication to those points and matters incidental thereto."

This amendment was made in March 1952, a year after when the case was at the stage of arguments and retrospective effect could not be given to it. At any rate, it was left to the parties to raise objection, if any, regarding this aspect of the case and usual notices were issued for filing statement of demands and written statement. It is significant to note that no objection was taken by the parties either at the time of framing issues which were formulated by mutual consent of both sides nor any exception was taken to the reference in the course of arguments. I need hardly say that I have pointed out this aspect of my own accord because the absence of Schedule was noted on the order of Reference at the outset when it was received and it should have been unfair to have remained silent about that note.

The parties on the receipt of notice asked for extension of time and ultimately the pleadings were completed in June 1951 whereupon the representatives of Assam Oil Company, Assam Oil Company Labour Union, Assam Oil Company Contractors Association, Assam Oil Company Contractors, were called to a preliminary sitting at Calcutta in order to discuss the procedure to be followed about the hearing of the dispute and to ascertain the number of witnesses to be examined. Both sides were represented by practising lawyers and they asked for time for the casting of issues arising out of the pleadings. The counsel also gave an idea of the number of witnesses and insisted on recording the evidence at Digboi as well as for the inspection of the spot. In view of the climatic conditions in that part of the country both sides stated that the month of September or October 1951 be availed for the purpose of recording evidence. The learned Counsel also took upon themselves to formulate the points of dispute by mutual consultation and the hearing was accordingly adjourned to 28th August 1951. On the next hearing, points of dispute arising out of pleadings were formulated between Assam Oil Company Labour Union and the Assam Oil Company by mutual consent excepting point No. 30 about which Shri S. C. Sen, the learned Counsel for the Company got his protest recorded.

Shri S K. Basu, however, filed an application for addition of certain words in some of the Issues some days after and as Shri J. K. Ghosh agreed on behalf of the Company to such additions on following points in the amended form were treated as issues in the dispute.

ISSUES:

(*Assam Oil Company Ltd.* Vs. *Their Workmen*)

(1) Revision of Pay scales for all categories of unskilled, semi-skilled, skilled and highly skilled workers, clerks and other ministerial staff.

(2) Increased Dearness Allowance according to the increased cost of living as well as family allowance for families more than three consumption unit.

(3) Bonus for the year 1948-49 and onwards according to the financial position of the Company at the rate of three months' wages inclusive of Dearness Allowance for every year.

(4) Principles to be laid down for promotion through a Board of Examiners according to set standards as uniform as possible and abolition of unjust and unnecessary test for all intermediary grades except an initial test.

(5) Demand for 10 days Casual Leave with full pay to all workers and grant of Casual Leave without requiring a prior application in case of emergency.

(6) Gratuity or termination allowance on death in addition to Provident Fund.

(7) Demand for the joint management of Provident Fund by giving representation to the Union.

(8) Revision of Standing Orders already in force with the consultation of the Labour Union.

(9) Demand for full acting allowance for all work in the higher post as well as night allowance, duty allowance, cash handling allowance, overtime allowance after working eight hours in factory and fields, etc.

(10) Demand for having relieving staff.

(11) Demand for regular half an hour's recess to all workers including Fireman, Engine Drivers, Pump Drivers etc. and two hours recess for all general shift workers in cold weather.

(12) Demand for the periodical examination of the workers engaged in hazardous occupations by the Company and their treatment at the expense of the Company.

(13) Continuation of Negotiation Committees as a machinery to ensure security of service.

(14) Demand for the payment of school fees for the children of employees studying at the local school at Tinsukia on the lines already introduced at Digboi.

(15) Abolition of contractor's labour inside factories and oil-fields.

(16) Recruitment of more fireman, engine drivers, drilling, rig-building and production gangs etc. to recoup the shortage of hands in these categories of workers.

(17) Demand for the re-employment of *ex*-strikers without discrimination *viz.*:—

(1) Shri U. C. Bhowmik (Regd. No. 591).

(2) Shri S. M. Sen (Regd. No. 883).

(3) Shri C. R. Guha (Regd. No. 4019).

(4) Shri Rampat Ahir (Regd. No. 10374), etc.

(18) Increase of House Allowance to Rs. 8 minimum.

(19) Provision of water supply and light in each quarter as well as in Bustee area.

(20) Demand for the sale of coke and Kerosene Oil at cost price to all workers.

(21) Demand for treating accident period as sickness period in the case of—
(1) Bhumilal (Regd. No. 15809).
(2) Dalbahadur (Regd. No. 22319).
(3) Naresh Chandra (Regd. No. 18602).
(4) Jamini Kumar Das (Regd. No. 19755).
(5) Sachindra Kumar Dey (Regd. No. 27304) etc.

(22) Demand for the reinstatement of—
(1) Sarathi (Regd. No. 15942).
(2) Aminor Raheman (Regd. No. 17419).
(3) Abdul Rashid (Regd. No. 25539).
(4) Kandarpa Ram Kalita (Regd. No. 14880).
(5) Padampani (Regd. No. 27115).
(6) Tikaram (Regd. No. 26523).
(7) Sudhanya (Regd. No. 25517).
(8) W. Bannett (Regd. No. 20605).
(9) Miss Rumnong (Nurse).
(10) Abdul Mazid (Regd. No. 2595).
(11) Rakhal Chandra (Regd. No. 25619).
(12) M. C. Mazumdar (Regd. No. 26446) and others.

(23) Demand for setting aside the order of warning given to the workers mentioned in item 23 of the Charter of Demands *viz.*—
(1) Parasuram (Regd. No. 8151).
(2) Abdus Salam (Regd. No. 23309).
(3) Suresh Chandra (Regd. No. 27401).
(4) Dibakar (Regd. No. 13169).
(5) Pataiah (Regd. No. 28789).
(6) Jagannath (Regd. No. 28785).
(7) A. Hussain (Regd. No. 23940).
(8) Md. Ali (Regd. No. 16032).
(9) Dukhi Ahir (Regd. No. 9754).
(10) Chinaya (Regd. No. 14427).
(11) Kurmaiya (Regd. No. 29015).
(12) Jagdeb (Regd. No. 22202).
(13) Dandasi (Regd. No. 14456).
(14) Jit Bahadur (Regd. No. 21269).
(15) Braiah (Regd. No. 22722).
(16) Kabilash (Regd. No. 18626).
(17) Sher Bahadur (Regd. No. 17794).
(18) Dal Bahadur (Regd. No. 22746).
(19) Gouri Sirkay (Regd. No. 26056).
(20) Uzir Sonar (Regd. No. 13380) and others.

(24) Demand for the promotion of—
(1) Surendra Kumar Nath (Regd. No. 18190).
(2) Nandalal Talukdar (Regd. No. 12230).
(3) Dimbeswar Bor Borah (Regd. No. 1245).
(4) Karamali (Regd. No. 16516).
which was unjustifiably withheld.

(25) Demand for setting aside the order of reduction of pay in the cases of:
(1) Damar Singh (Regd. No. 12331), and
(2) Mohan Senapati (Regd. No. 21141).

(26) Classification of jobs of the workers dealing with the work of drilling, rig building, production etc. as well as for the removal of grievances of Chart Calculators of Production and midwives.

(27) Demand for the payment of wages of A. Bora Gohain (Regd. No. 25319) for the leave period.

(28) Miscellaneous demands regarding the violation of tripartite agreement and gentlemen's agreement regarding joint enquiry as well as increase in the monthly-rated Mohammedan bachelor quarters and family quarters of all categories.

(29) General demand that no worker should be discharged from service during the course of court trial.

(30) Grievance regarding the non-implementation of the terms of the previous award and demand for the payment of arrear dues with retrospective effect. (This was objected by Shri S. C. Sen, the learned Counsel for the Company).

(31) Classification of all categories of workmen and fitting them in their respective scales and grades of pay.

The other statement of claims filed on behalf of the Assam Oil Company Contractors Labour Union was next taken up and issues suggested by both the Counsel were adopted and placed on the record marked (X) which are also reproduced as under:

ISSUES:

(*Assam Oil Company Contractors Association* Vs. *Their Workmen*)

(1) Grant of permanent status to

(a) Workmen with more than six months' service.

(b) Status of "Temporary" or "casual" workmen for others.

(2) (a) Classification of all permanent, temporary and casual employees as unskilled, semi-skilled, skilled and highly skilled according to their nature of work, skill, responsibility, risks involved, qualifications and other factors.

(b) Status of all these employees to be Company's employees with same scales of pay, grades and service benefits as other employees of the Company.

(3) Revision of pay scales for all categories of employees according to the specific demand made by the Union in its Annexure No. 2(a).

(4) Increased Dearness Allowance according to the increased cost of living compared with the pre-war prices.

(5) Maintenance of Ration shops by the employers under the supervision of a Joint Committee with cost of maintenance fully borne by employers.

(6) Same leave benefits as granted to the workmen on the Company's register.

(7) Provident Fund, its management and rules.

(8) Gratuity or allowance on termination of service.

(9) Maintenance of service register showing all necessary particulars about designation, pay, classification, increment and length of service.

(10) Enforcement of the principle of seniority in the matter of employment and retrenchment.

(11) (a) Maternity benefit and free medical aid to all female employees and their dependants.

(b) Free medical aid to all other employees and their dependants.

(12) Provision for free primary and secondary education for the employees' children or payment of school fees or adequate educational allowance to employees by their employers.

(13) Raising of minimum House Allowance to Rs. 8 per month.

(14) Full wages for over-time work for 1½ hour on every Saturday since February 11, 1949.

(15) Free periodical medical examination of all employees engaged in hazardous occupations.

(16) Framing of Standing Orders as those of the Company.

(17) Proper maintenance of Attendance Registers with full particulars including duration of work, over-time, etc.

(18) Regular payment of wages on or before the 10th of each month.

(19) Timely issue of proper pay slips on a printed form showing full particulars and signed by a duly authorized person.

(20) The question of giving signatures or thumb impressions at the time of payment.

(21) Payment at the same time of wages and over-time wages.

(22) Payment of unpaid wages on any day during office hours or by postal orders to applicants.

(23) Regular issue of a proper leave certificate for any leave with or without pay.

(24) Timely payment of workers' wages and other dues at the time of their going on leave and on the very day of termination of service.

The weather conditions, however, did not permit to start with the recording of evidence at Digboi in September as fixed tentatively and ultimately the Tribunal's first sitting commenced at Digboi on 18th October 1951. The Labour Union meanwhile was afforded an opportunity to inspect certain records in the custody of the Company and after due inspection of various documents, books and registers the Union led the evidence and occupied the Tribunal from 18th October to 3rd November 1951 consecutively but still could not conclude their evidence as initially expected and the case was adjourned *sine die* by my detailed order of 30th October 1951 and 3rd November 1951 because the Tribunal was unable to remain out of the Headquarters any longer on account of the hearing of Reference No. 1 of 1951 (Hindusthan Co-Operative Insurance Society Ltd.) which was already fixed in November 1951. A large number of applications under section 33 of the Act had been filed by this time and some of them were also heard and disposed of.

The sitting at Digboi was resumed in the first week of March 1952 and this time the hearing continued from 8th March 1952 to 22nd March 1952 from day to day excepting Sundays and at long last the recording of evidence came to close. Arguments in the case had to follow soon after in the first week of April 1952 but Reference No. 6 of 1951 (Messrs. Mackinnon Mackenzie and Co., Managing Agents of British India Steam Navigation Co., Ltd., Calcutta Vs. Their workmen) was already fixed in the first week of April and the Chairman of the Tribunal soon after proceeded on leave and in these circumstances the arguments were adjourned to 9th May 1952. The learned Counsel for the Labour Union, who opened the case in the first instance continued his arguments for three weeks i.e., from 9th May 1952 to 30th May 1952 and the Company's Counsel also took about a fortnight and with the reply of Shri S. K. Basu, the learned Counsel for the Union, the arguments in all its weariness ended on 16th June 1952 shifting the burden to the Tribunal to go into the statements of about 100 witnesses examined in the case and hundreds of exhibits consisting of multitudinous lists, charts, tables, returns, reports and heavy correspondence touching the points in dispute between the management and the Labour Union. It would not be out of place to say that this considerable mass of evidence was allowed to be led in more under the stress of a rule of caution than of law. At any event the proceedings were unduly protracted by the clawing contest of the parties if I may say so and it became almost impossible for the Tribunal to expedite the disposal of the Reference which anxiety was not shared by the representatives as borne out from the various orders of the Diary.

The dispute which is more than a decade old has been through various vicissitudes and has a chequered history at its back. Previously more than one Enquiry Committees and one adjudication by this Tribunal have preceded this fresh adjudication in which all old sores have again been ripped open and the Tribunal had no alternative but to put all the points of difference into issues and to treat them as points of dispute for want of specification in the Reference itself as stated above.

Genesis of Dispute.—The Assam Oil Co., has its oil fields and refinery at Digboi and manufacturing factories and installation at Tinsukia and in their work of oil production, refining as well as of manufacturing, the Company employ a large number of workers on daily wages and maintain a central big office of clerks and others on monthly rate basis besides employing labour through their registered contrators who have also been impleaded as party in this Reference. The place of this operation is in a far-flung corner of Assam State bordering Burma and the labour is imported from various outside a States. The workers for the first time

organized themselves into a Trade Union under the nomenclature of 'Assam Oil Company Labour Union' in February 1938. The Union, however, could not function properly owing to various reasons which need not be mentioned here and at one time it became defunct. The Union was revived in August 1946 and was duly registered under the Indian Trade Union Act in January 1947 with its head office at Digboi.

It was however, in July 1938 when Assam Oil Company Labour Union for the first time submitted their general demands to the management and on the failure of amicable settlement a Court of Enquiry was appointed under the provisions of section 3 of Trade Disputes Act by the Government of Assam. The report of this Court of Enquiry was published in February 1939 but the relations between the parties did not improve and the situation worsened on account of successful strike of the whole labour. This time a Conciliation Board was set up and an Enquiry Committee was also appointed to go into the causes of the strike. The reports of the Conciliation Board and that of the Enquiry Committee were published in due course but so far the relations between the management and the labour were concerned the dispute could not be successfully resolved. The Union meanwhile as stated above was revived and a provisional Executive Committee was formed, and it became possible for both sides to sit in a Tripartite meeting of the representatives of the Union, the Company and the Central Government. Labour Commissioner for the consideration of joint demands of the labour. The proceedings of this tripartite conference went on for several months and a negotiating committee consisting of representatives of Union and the Company was set up and in these negotiations the demands were so to say crystallised but as agreement by way of mutual consultation was not possible the dispute was referred under the Industrial Disputes Act for adjudication to Central Industrial Tribunal, Calcutta under the Chairmanship of Mr. Justice Varma. The Tribunal's award was published in February 1949 which has figured very prominently in the course of these proceedings for the simple reason that almost all the points now in issue came up for discussion before Mr. Justice Varma also and the award was duly made on those points Normally the award should have set the dispute at rest but it may only be said that the gulf was not bridged and the previous award formed the subject of discussion again before the Conciliation Officer and Chief Labour Commissioner (in April 1950) and a fresh charter of demands was given by the Assam Oil Company Labour Union. These proceedings ended in November 1950, and for want of agreement the dispute necessitated fresh Reference in March 1951 to this Tribunal as said in the beginning.

The Union's case has been stated in their statement of claims under 28 heads, sub-divided in some cases into sub-heads shown in letters and it covers 64 typed pages commencing from pages 19 to 83. I do not propose to make a precis of their case and would discuss the facts about each demand while dealing each individual point at issue. The Company also filed written statement covering 28 pages which was supplemented by 9 Annexures comprising over various charts, graphs, copies of previous pay scales and Dearness Allowance, standing orders, statement of quarters, grade tests for Tradesmen, Provident Fund Rules, list of clothing supplied to workmen, Company's letter to Union dated 8th September 1949 regarding Welfare Committee, etc.

As stated above this Reference relates not only to a dispute between Assam Oil Company and Assam Oil Company Labour Union but also between the contractors of the Company and their workmen who preferred separate statement of claims but in view of the oneness of Reference the evidence in both was recorded under one serial, and this award shall govern the disposal of both the disputes.

Preliminary objections.—Before embarking upon the issues, it has become necessary to deal with some of the preliminary objections raised by Mr. Sen on behalf of the Company which may be stated as follows:

(1) It was objected that the Industrial Tribunal, Calcutta under the Chairmanship of Mr. Justice Varma had given an award on almost all the points now raised by the labour earlier in February 1949, which was duly implemented and revision of the prior award is not competent until and unless it is proved on the record that there have been material change of circumstances or as a matter of fact there was some such patent error which warrants the review of a certain matter already adjudicated upon.

(2) That no point can be raised before this Tribunal which actually did not form the subject of conciliation proceedings preceding this Reference.

(3) That the Labour Union have taken up some specific cases of employees who do not satisfy the definition of 'workman' and as such their cases are not capable of adjudication. Shri Sen in support of the first objection urged that the award made by Mr. Justice Varma in February 1949 was the result of thorough and shifting enquiry in which the labour was represented by the same Counsel and the representatives who are now in charge of the case. Reference was made to the issues involved in the previous case and the findings given thereupon with reference to the pleas advanced at that time as well as the authority cited, and it was maintained that in these circumstances it was wrong to say that the previous award was not definite and in certain matters was open to further consideration. It was next urged that the terms of the previous award were duly implemented and there have been no change in the circumstances in the industry which should warrant the revision of the findings of the previous adjudicator on the same questions which were posed for discussion before him. Reliance was placed on various decisions touching on this aspect of the question and it was argued that the fundamental concept of the labour legislation is that the award is binding between the parties for a good reasonable time and should not be disturbed without having made a *prima facie* case that the circumstances have undergone material change. It was emphasised that but for this rule there would be no finality much less respect for any award. The first authority cited in support of the contention is a decision of the Labour Appellate Tribunal, Calcutta between the Sugar Mills of Bihar and their Workmen (Reported in Labour Law Journal—1951—Vol. I, page 469). In this case the contention of the employer *viz.*, 'that an award is binding for all times to come' was repelled and it was further observed that a prior award can and ought to be considered by a later award made on a new Reference if there are mistakes, anomalies or errors in the prior award or other grounds are established which could be considered as good grounds for re-consideration of a judgment pronounced by a Civil Court. In that particular case the Labour Appellate Tribunal found that there were several errors apparent on the face of the record and held that that could justify re-opening of the previous award. The other authority cited is a decision given in 'Tinplate case by Shri F. Jeejeebhoy wherein the question was discussed at some length and as Shri Sen laid great stress on the observation and finding given in this case the operative part is reproduced as under:

THE BIHAR GAZETTE (EXT.), MARCH 14, 1949

Pages 3-4: "What then is the force and validity of an award; how far is it affected by subsequent agreement of parties; and what are the factors which limit the binding force of an award? These matters must be properly understood if there is to be respect for awards and agreements in furtherance of industrial peace. Section 15 of the Industrial Disputes Act provides that on receipt of an award, the appropriate Government shall by an order in writing declare the award to be binding (there is a proviso which is not relevant to this Reference and therefore I shall not deal with it). Sub-section (4) of section 15 proceeds to say that save as provided in the proviso to sub-section (3) of section 19, an award declared to be binding under section 15 shall not be called in question in any manner. Sub-section (3) of section 19 states that an award declared under section 15 to be binding shall remain in operation for such period not exceeding one year as may be fixed by the Government; and this provision has been interpreted by the workmen to mean that an award loses its force and validity at the end of the notified period, in any event not exceeding one year, and that thereafter all the issues previously determined are thrown open to fresh consideration, even in the absence of change of circumstances. Such interpretation, in my opinion, is incorrect. I am aware of the practice of the Government under this section to declare certain award binding for periods of three months or six months; and labour has accepted it as an invitation at the end of such period to re-agitate a rejected claim (in the absence of any change of circumstances) until a Tribunal could be found to uphold it. And indeed the facility with which the workmen have been able to raise the same issues before subsequent Tribunals (Issue No. 1 comes to this Tribunal for the third time in two years) has not helped to dissolve what I feel is a misconception.

"In a consideration of this subject we must start with the fundamental concept that an award of the Tribunal has the same force as any other award or decision and is entitled to the same respect. And it is but a corollary to the concept that the principle of *res judicata*

should apply so that on the same facts and in the same circumstances the issues decided may not be re-tried in fresh proceedings with a view to securing a different decision. If it were otherwise, there would be no finality to decisions, with the unfortunate result that labour, unsuccessful on an issue, would wait discontented, restless and impatient for the period of the notification to elapse and would then embark on go-slow tactics or other equally questionable means to force a fresh reference from the Government in the absence of any change of circumstances. The evils to which this may lead are well illustrated by what has happened in this concern; a spirit of discontent and defiance prevailed, the minds of the workmen had been distracted from work by the prospect of another struggle, and discipline suffered; and as soon as Tata packs were re-introduced they embarked on go-slow tactics and brought work to a standstill in order to force the issue. That such a result should follow could never have been the intention of the Act.

"As I conceive it, an award is final and binding for all times in matters relating to personal rights, as for instance victimisation; and an award or agreement of parties on all other matters like wage structure, bonus, amenities, etc., is final and binding until altered by consent of parties or replaced by a fresh award based on change of circumstances. Such is the prevailing concept of awards and agreements in other countries which are equally conscious of the claims of labour and it is in consonance with natural justice and with recognised legal principles." ...

Of the two other authorities relied upon one is a decision between 'Ford Motor Company and their Workmen' in which it was held by the Labour Appellate Tribunal of India that where an award has been made between the parties the award should be tried for a sufficiently long time before any changes can be effected in terms thereof. The last citation was in the case of 'Army and Navy Stores, Bombay and their workmen' wherein the point was not exactly discussed on the doctrine of *Res Judicata* or the validity of the award as in the cases dealt with above but the learned Appellate Tribunal on the question of change of scales of wages held that basic wages once fixed should stand for a reasonable period of time unless some substantial circumstance intervenes and that in the present case no such change occurred between the Devatia award and the presentation of fresh demands by the employees eleven month later.

On the other hand Shri S. K. Basu vehemently urged that this Reference is independent under section 10 of the Act and the previous award is only one of the items to be kept in consideration and cannot constitute a bar in the adjudication of this Reference on its own merits. It was contended that no such onus lay on the Union to make out a case for revision when a Reference has been made to the effect that a dispute exists between the parties and as such the objection raised by the employer was untenable. A reference was made to Sections 15, 17 and 19 of the Act, and it was maintained that the statute distinctly contemplates that the period laid down in Section 19 sub-section (3) can be limited to material change one year and not after one year and as such the plea of change circumstances as a condition precedent was of no avail. It was submitted that the question of *Res Judicata* does not arise in view of the plain meaning of the words in section 19 of the Act. Reliance was furthermore placed on the following authorities:

(1) Labour Law Journal—August 1950—page 788.

(2) Labour Law Journal—October 1951—page 543.

(3) Labour Law Journal—January 1951—page 50.

The first legal precedent is a decision of the Industrial Tribunal, West Bengal in the case of 'Corporation of Calcutta and their employees'. The Tribunal, subject to minute of dissent by Shri P. R. Mukherjee, held that it is the duty of the Tribunal to rectify errors, omissions, anomalies or elements of hardship in a prior award irrespective of any question of *Res Judicata* or the employees failure to establish a case about the change of circumstances. Shri Basu led stress upon the words 'elements of hardships' and argued that in the present case besides various omissions and errors in the prior award the element of hardship was writ large specially in the fixation of scales of pay, Dearness Allowance and classification. The second case cited by the learned Counsel is a decision given in 'Caltex (India) Ltd.' by the Industrial Tribunal, Bombay. In this case the learned adjudicator Shri I G. Thakore held that it was open to the workmen to

agitate for change in the terms of a prior award between the parties without showing change of circumstances. The next authority relied upon is a decision given in the 'Standard Oil Vacuum Company, Bombay and their workmen' of Industrial Tribunal, Bombay. This case was also decided by Shri I. G. Thakore who subsequently heard the case of Caltex (India) Ltd. referred to above. It was held that proof of material change of circumstances was not necessary to review the scales laid down in a prior award.

Now on the appreciation of the arguments advanced by both sides on this basic preliminary objection and on the perusal of the authorities cited for and against I find that some of the rulings cited are the decisions of the Labour Appellate Tribunal whose finding is binding upon me. In the circumstances without going into the details of the facts of the cases decided by the Industrial Tribunals and cited at the bar I would rather like to be guided by the dictums laid down by their lordships of the Labour Appellate Tribunal. Their finding was summed up in the case of Sugar Mills of Bihar (Reported in Labour Law Journal—1951—Vol. I—469). This is reproduced as under for facility of reference:

> "None of the decisions go to the length of applying the rule of *res judicata* as understood in civil law. The rule is that a decision on a matter directly and substantially in issue by a court of competent jurisdiction is binding on the parties and their representatives for all times to come, and cannot be reagitated by any of them or their representatives before another court of co-ordinate or inferior jurisdiction. The case of change in circumstances since the prior decision has no place in that rule as applied by Civil courts. Apart from this, we are of opinion that that rule should not be applied to industrial disputes, for it may, and in most cases, would come into conflict with the fundamental concept, namely, maintenance of industrial peace and promotion of harmonious relations between capital and labour with a view to achieve greater production. The relations between labour and capital must be regulated from time to time to attain those objects. In view of the provisions of section 18 of the Act the rule *resjudicata* as known to civil law if applied to industrial disputes would lead to stagnation and a feeling of frustration and so would create more unrest in the industrial sphere. In fact, it has been observed by a high authority "that principles of civil law concerning finality can be applied only after careful adaptation to the special needs of this branch of law" (I.L.O. publication on 'Conciliation and Arbitration in Industrial Disputes'). The rule of *res judicata* should not therefore be applied in industrial disputes.
>
> "The power to grant review is not inherent in judicial or quasi-judicial bodies. It must be expressly conferred by statute (Lala Prayag Lal *Vs.* Jai Narayan Singh; Baijnath Goenka *Vs.* Nand Kumar Singh). It has been conceded before us by both parties that an industrial tribunal constituted under section 7 of the Act (XIV of 1947) has not the power of reviewing its award, even where there are mistakes, anomalies or errors appearing on the face of the record or of the award or even if there are other grounds which would have been considered to be good grounds for review of judgment of a civil court. It is, therefore, just and proper in such cases to allow reconsideration of the award by a later award made on a new reference, otherwise there would be no way to remove them, and cases may also occur where the prior award could not be worked out satisfactorily. To hold otherwise would be to perpetuate mistakes, anomalies and errors and this is very undesirable in the field of industrial relations.
>
> "We therefore think that the rule should be that a prior award can and ought to be reconsidered in a later award made on a new reference if there are mistakes, anomalies or errors in the prior award or if other grounds are established which could be regarded as good grounds for consideration of a judgment pronounced by a civil court."

When I read the above extract, it seems clear to us that the view taken by the Tribunal in Tinplate case was not upheld by the Labour Appellate Tribunal. The other thing which catches the eye is that the rule of the change of circumstances should also not be applied strictly to industrial disputes to avoid conflict with the fundamental concept *viz.* maintenance of industrial peace and promotion of harmonious relations between capital and labour. I myself moreover have held in previous decisions that the rule of *Res Judicata* could not be applied as considered

n Civil Courts in Industrial disputes and I am rather fortified in that view on going through these authorities. The other aspect of the question is to re-open he matter in order to rectify omissions, anomalies etc. on the lines of review. Their lordships of the Labour Appellate Tribunal in this respect have held that power to grant review is not inherent in judicial or quasi-judicial bodies and it must be expressly referred by Statute. In this view of law the other course is naturally of a fresh reference. In the present case a fresh reference has been made after the parties had exhausted all efforts of conciliation and the record reveals that after the award of 1949 the points of dispute were again taken up before the Conciliation Officer and Chief Labour Commissioner in 1950 to which the employer was admittedly a party. This one factor takes wind out of the sails of the objection that the previous award was a bar in the determination of the issues embodied in the fresh Reference. There is yet another aspect of the question *viz.* that this Tribunal has been called upon by Government of India to adjudicate between the parties on the finding that the dispute exists between the parties. This Reference accordingly will be treated as a fresh suit and it is futile to urge that finality can be given to the previous awards whose duration by itself is laid down under section 19 and cannot be treated as the last and final word between the parties. It is a different matter that the awards should be respected for a considerable time but it does not mean to lay down a rule that even if there is a dispute between the parties that dispute should be hushed up on the plea of a previous award. I am therefore of the opinion that the labour is not precluded in having raised the dispute with the employer Assam Oil Company and the points of dispute formulated in the issue given above shall have to be considered and determined on merits of the case in the light of the evidence adduced now, regard of course being had of the previous award which constitutes valuable piece of evidence for consideration.

The other objection mentioned above is that only those points can be raised now which formed the subject of conciliation proceedings. This objection I may say in passing negatives the first objection inasmuch as the employer admits that points of dispute after the prior award were referred to Conciliation Officer for the purpose of amicable settlement. Be that as it may the second objection is that the points of dispute now raised in the reference when read with section 12(5) of the Act would lead to the conclusion that no other point can be raised which was not before the Conciliation Officer. Shri Basu arguing on behalf of the Labour Union replied that when once fresh reference is made, the Union was not tied down with the Conciliation Officer's report and that the power of the Government of India is unlimited in this respect. It was contended that there was no Schedule attached with the reference embodying the issues or points of dispute and it was left to the Tribunal to find out all points of dispute where the parties joined issue and an such all points now raised are to be adjudicated upon without limiting their number which formed the subject of conciliation proceedings. It was maintained that procedure laid down in section 12 is not a condition precedent, and reliance was placed on Labour Law Journal—October 1951—page 537 and a decision of the Madras High Court (Reported in Labour Law Journal—March 1951 at page 219). Lastly it was submitted that all points now raised were also before the Conciliation Officer. In the Madras High Court case cited above it was held that the procedure laid down under section 12 of Industrial Disputes Act was not a condition precedent to a Reference by a Government of a dispute to a Tribunal. In the other case also the Industrial Tribunal, Bihar came to the conclusion that the conciliation proceedings were not conditions precedent to the validity of reference. In sub-section (5), section 12 of the Act the word used is "may" which clearly indicates that it lies with the appropriate Government to make a reference or not and in these circumstances the Conciliation proceedings do not constitute a condition precedent as held in these authorities. But the contention exactly is as to whether new points can be added into the points raised before the Conciliation Officer. It is a different matter that the appropriate Government may refer a dispute for adjudication without going through the conciliation proceedings or even if a report is submitted by the Conciliation Officer the court may decline to make any reference and that a new case be set up, which did not form the subject of discussion before the Conciliation Officer in the first instance. I therefore think that the authority cited is not in point and new disputes cannot be taken up if it did not form the subject of conciliation proceedings. Shri Basu however as said above states that all points now in issue were taken up in conciliation proceedings which fact was not categorically denied by the other side by pointing out any exception and in these circumstances the objection becomes immaterial.

The third objection is to the effect that some of the employees whose cases are specifically put in issues Nos. 21 to 24 are not 'workmen' and in this respect

reference was made to supervisors, surveyers, Inspectors etc. Shri S. C. Sen referred me to a full bench decision of Labour Appellate Tribunal (reported in Labour Law Journal—June 1952) wherein the learned Tribunal has not exactly decided as to who the workman is and while dealing with the interpretation of 'any person' used in the definition of workman under section 2(s), it was held that the words 'any person' were co-extensive with the word 'workman' and could not cover an officer or other member of the managerial staff, and that the expression 'any person' cannot have the widest amplitude as that would create incongruity or repugnancy in the provisions of the Act. Shri Basu in the refutation of this objection maintained that in the first place the specific cases referred to are all of workers which fact has been admitted by the Company in the written statement. Secondly, that the objection was only of academic value as it was not considered in the full bench case cited above as to who is a 'workman'. The Company furthermore was bound by their own admission which they made before Mr. Justice Varma at the time of previous adjudication where they filed the list of workmen for the purpose of scales of pay and all these workers were mentioned therein, and even now in their written statement at page 5, para. 13, the Company has stated that the pay scales of the workmen are in conformity with the last award. It was concluded that the names and designations of all these workmen now taken exception to *i.e.*, supervisors, surveyers, sanitary inspectors, sanitary engineers, all are mentioned in the written statement.

Now on reference to the documents discussed above the question appears to be a settled one on facts as to how these men are treated by the Company. Exhibits 21 brought on the record by the Company giving the names of various jobs and the employees with designations would go to show that the Company treated them as workmen. If they had been officers, objection should have been taken at the outset. Furthermore, the managerial staff is in the covenanted service and all others are treated as workman in various departments. At any event no evidence was brought on the record with regard to the nature of work, their duties of controlling, or managerial power to enable the Tribunal as to who is an officer. In the absence of any evidence as stated above and the various admissions of the Company that these persons have been treated as workmen, this objection also appears to be devoid of any substance and is ever ruled. Before leaving this objection I am reminded of an application which was filed by the Company in general that the disputes regarding Welfare Departments *viz.*, medical, education etc., do not satisfy the definition of section 2(k) and as such are not industrial disputes. No argument was addressed on that application separately and Shri S. C Sen submitted that this point shall be argued when these departments are to be discussed in the matter of scales of pay, and dearness allowance etc. Accordingly it shall be considered at the appropriate time when dealing with the specific issues, and preliminary objections are repelled, of course, subject to a finding on welfare departments.

ISSUE No. 1 AND 31/26.

Issue No. 1.—Revision of pay scales for all categories of unskilled, semi-skilled, skilled and highly skilled workers, clerks and other ministerial staff:

Issue No. (1) was discussed from various stand-points and in view of another demand for the classification of all categories of workmen and fitting them in their respective scales and grades of pay was argued simultaneously with Issue No. 31 which reads as follows:

Issue No. 31.—Classification of all categories of workmen and fitting them in their respective scales and grades of pay.

The classification of jobs of some of the workers in the drilling, rig building and production departments was again separately put in Issue No. 26 along with another incongruous matter *viz.*, the removal of grievances of chart calculators of production and midwives. These issues were argued collectively because the demand for the revision of scales of pay, grades, as well as classification and fitting of jobs in their respective scales constitute one complicated series of demands. These will be dealt with together regard being had of course to the relevant arguments advanced in each demand. Obviously this amalgum of complex facts presents some difficulty, and attempt shall be made to disentangle this skein of facts in treating the questions involved under various sub heads for the purpose of elucidation and understanding the view points of both sides.

The demand in regard to the pay scales for all categories of employees has been embodied in Exhibit WW-1 of 16th October 1950 covering 8 typed pages which

is an amplified statements of demands of the Union. On the other hand, the existing pay scales of all categories of employees of general office and various departments are given in Annexure (1) enclosed with the written statement of the Company. There are other tables and charts also giving the picture of comparative pay scales in other establishments in the State of Assam and Oil companies situated outside which shall be referred to and taken note of at appropriate place in the course of discussion.

Shri S. K. Basu, however, before dilating upon the merits of the demands referred to various books of reference and published authority wherein the leading principles upon which pay scales are based have been enunciated and in this respect began with the Central Pay Commission Report in the matter of pay scales and reference was made in particular to pages 34, 36, 37, 38 and the remarks made at pages 137, 149, 159, 170, 179, 185, 195, 233, 245, and 341. It is indeed difficult to make out anything by this rambling study of the report as to what actually is of any avail to the labour side while dealing with the question of pay scales in an oil factory. Of course, it cannot be denied that the observations made here and there while dealing with various departments can be read with advantage for general interest. I have tried to go through some of these pages of the report and I am of the opinion that this desultory reading shorn of context cannot be accepted as the basic criterion in the determination of this issue. The outstanding feature of the aforesaid report is, that the justification for an increase of salary lies mainly in the change in the economic conditions and the necessity of enabling the employees to raise the standard of living to a tolerable extent; and the principles of salary determination considered in the Central Pay Commission Report therefore may not be a very good guide for and against. To my mind a new approach to the problem would be more useful in the light of comparative salaries given in other industries to the workers. The Central Pay Commission Report moreover, deals with Government servants, who are unlike workers, monthly rated and even in the case of clerical and supervisory staff of the Company, I do not think their recruitment again rests on educational qualifications and other considerations requisite for Government service. Private employment furthermore stands on different footing and the question of wages could be settled even by collective bargaining, as the wage structure reflects in a large measure to capacity to pay of an employer and the nature of work entrusted to the employees. At any rate while taking cognizance of all these trends I am of the opinion that general observations made at different places in the voluminous Pay Commission Report without minimising their great value should not detain me to discuss each argument based on a certain observation referred to by Shri Basu in the report if I have followed the view point advanced alright. The learned Counsel also referred to various previous decisions of the Tribunals and the first case cited in this connection is of Ford Motor Company (India) Ltd., *Vs.*, their workmen (Reported in Indian Labour Gazette, February 1949 corresponding to Labour Law Journal, 1949, Vol. I, page 126). The adjudicator in this case had to deal with a demand to change the daily rated system to one of monthly rated and working on the Ratio Descondii of various awards came to the conclusion that a demand for a change from hourly basis is largely of a sentimental nature. He also observed that though under the present system the workers are ostensibly not paid for 52 half Saturdays and 52 Sundays in the year as well as for public holidays on which business is closed, it is fair presumption to make that the rate per hour is fixed with reference to what would ordinarily be the pay of a workman on a fair monthly basis. How this kind of demand has not been made by the Labour Union in this case and the legal precedent cited on behalf of the Union appears not to be in point. Shri Basu's argument of course was to show that in Ford Motor Company the daily rates are high as compared with Assam Oil Company. The other decision relied upon was between 'Burmah Shell Oil Storage & Distribution Co., Ltd. and their workers'. The learned adjudicator in fixing the wages of Burmah Shell Company held that as the capacity of the Company to pay fair wages was beyond question hence they should pay its workers fair wages which would be slightly higher than the wages paid on other industries. The Tribunal fixed the minimum salary of the workers in the clerical department at Rs. 85 per mensem. Shri Basu argued that in the case of Assam Oil Company the capacity to pay has not been challenged by the employers and the scales of pay could therefore be safely brought on the lines of Burmah Oil Company. The next case is one of Associated Cement Co. Ltd. (Labour Law Journal 1951—Vol. II—page 387). Shri Basu drew my attention to the scales awarded by the Tribunal in the case of peons and watchmen, sweepers and malies, liftman, drivers and others mentioned at pages 391-392 of the journal On going through the award I find that no increase was made in the present scale and the demand of Rs. 40—3—70—4—90 was not accepted. Regarding the principle laid down in fixing pay scales, the Tribunal held that merely

because its resources are very great and therefore there is financial capacity to pay, it does not mean that the employees should be paid the wages they demanded. The Tribunal consequently rejected the demand for increase in wages of all categories as the wages paid were found to be inadequate. The legal precedent is not helpful to the labour and rather goes against it

In the case of Larson & Toubro Ltd., Bombay *Vs.* their workmen (Labour Law Journal—August 1951, page 221) the Tribunal also discussed the principles for fixation of wages and came to the conclusion that having regard to the recent establishment and growth of the Company the Company ought not to be compared with well established companies and the scales offered were fair. I do not see as to how this authority is helpful to the labour. The next case is of Caltex (India) Ltd. (Labour Law Journal—November 1951, page 654). In this case there was not much discussion over the principles in fixation of wages and the learned Tribunal only referred to some awards of Bombay and Calcutta and refused to apply wage scales of concerns as obtaining in Bombay, in Calcutta. The next authority also comes from West Bengal Tribunal in the case of Messrs. Parry & Company (Labour Law Journal—September 1950, page 964). The Tribunal held that the finances of the Company warrant the payment of a higher scale and laid down a suitable scale for the employees. The other two legal precedent relied upon are of the Army & Navy Stores Ltd. case (Labour Law Journal—December 1950) and Burmah Shell Oil Co. case decided recently in March 1952. In the Army & Navy Stores case the Tribunal held that because clerks in departmental stores in Bombay are generally paid lower salary than clerks in commercial concerns that by itself was not a reason why a concern as that of the present employer who could aflord to pay the higher scale should not be directed to pay higher wage especially when the wages granted are only fair wages. Shri S. K. Basu in enunciating the principle maintained that in this as well as in other cases it has been held more often that if the employer could afford to pay higher wage he must pay higher wage as compared with other concerns.—In Burmah Shell case (Reported in Industrial Court Reporter—March 1952) the pay scales were also considered, and the Tribunal observed that wage scales and other conditions of service must be fixed with reference to industry cum locality. They must of course vary according to condition of labour prevailing in other units of the same industry as also on the cost of living of that place Shri Basu also referred to Year Book of Labour Statistics (published by the International Labour Office) in 1951 and drew my attention to the wage level in different industries at pages 166 to 171 of the book. It was argued that the wage level trends are upwards and in some countries the wage level has gone as high as to bring the wages within the standard of living wage and that in the Assam Oil Company that level has not reached even to fair wage. Lastly Shri Basu referred to the Fair Wage Committee Report and argued at length questing *in extenso* various passages from the Report and maintained that in the light of the cardinal principles regarding wages laid down in this latest Government publication *viz.* Fair Wage Committee Report, it can be safely concluded that the wages of the workers and other employees of Assam Oil Company do not amount to fair wage what to say of living wage. As the whole argument is mainly based on the priciples laid down in Fair Wage Committee Report, it would be useful to reproduce the summary of recommendation of the said committee for facility of reference.

PAGE 32—SUMMARY OF RECOMMENDATIONS

"1. The 'living wage' represents a standard of living which provides not merely for a bare physical subsistence but for the maintenance of health and decency, a measure of frugal comfort and some insurance against the more important misfortunes (para. 7).

2. The 'minimum wage' must provide not merely for the bare sustenance of life but for preservation of the efficiency of the worker by providing for some measure of education, medical requirements and amenities (para. 10).

3. While, the lower limit of the 'fair wage' must obviously be the minimum wage, the upper limit is set by the capacity of industry to pay. Between these two limits the actual wages will depend on:

(i) the productivity of labour;

(ii) the prevailing rates of wages;

(iii) the level of the national income and its distribution; and

(iv) the place of the industry in the economy of the country (para.15).

4. The wage-fixing machinery should relate a fair wage to a fair load of work and in case of doubt whether the existing work load is reasonable or not, proper time and notion studies should be instituted on a scientific basis (para 18).

5. While prevailing rates of wages fixed as a result of proper collective bargaining will bear a close approximation for the present, to fair wages, the same cannot be said of prevailing wages resulting from unequal bargaining. Due allowance should, therefore, be made for any depression of wages caused by unequal bargaining (para. 20).

6. For ascertaining the "capacity of industry to pay", the capacity of a particular industry in a specified region should be taken into account. This, in turn, can be ascertained by taking a fair cross-section of the industry in the region (para. 23).

7. As regards the measure of the capacity to pay, the level of wages should be so fixed as to enable industry to maintain production with efficiency. The fair wages fixed should not be so out of line with wages in other industries as to cause movement of labour and consequent industrial unrest (para. 24).

8. It is not possible to assign any definite weight to any of the factors that should be taken into account in calculating fair wages (para. 26).

9. Where a benefit granted by an employer goes directly to reduce the expenses of a worker on items of expenditure which are to be taken into account for the calculation of the fair wage; it must be taken into account for calculating the fair wage payable (para. 28).

10. The standard family should be taken as one requiring three consumption units and providing one wage earner (para. 31).

11. In the initial stages, in view of administrative and other difficulties, provision need be made for the fixation of fair wages of only categories up to the supervisory level (para. 32).

12. The appropriate Government should be authorised to appoint wages boards for such industries as it considers necessary from time to time (para. 33).

13. Fair wages should be determined on an industry-*cum*-region basis (para. 34).

14. A number of factors should be taken into account in fixing wage differentials (para. 36).

15. Where employment is on piece-rates or where the work done by men and women is demonstrably identical, no differentiation should be made between men and women workers regarding the wages payable. Where, however, women are employed on work exclusively done by them or where they are admittedly less efficient than men, the fair wages of women workers should be calculated on the basis of a smaller standard family than in the case of a man. The exact size of the family should be decided by the Central Co-ordinating Authority ((para. 40).

16. Basic wages should be fixed in respect of a cost of living index number of 160 to 175, treating the cost of living index number of 1939 as 100 (para. 41).

17. For the lowest categories of wage earners the target should obviously be compensation to the extent of 100 per cent. of the increase in the cost of living. For categories above the lowest, a lower rate of compensation is justifiable but the amount of compensation should be based on salary scales or slabs (para. 45).

18. There should be progressive improvement in the fair wage, but such improvement will depend on improvement in the economic conditions of the country and of the industry concerned (para. 46).

19. In each province a Provincial Wages Board should be set up. Regional Boards for each industry taken up for wage regulation should also be set up according to requirements (para. 54).

20. A Central Appellate Board should be set up (para. 55)."

Shri S. C. Sen, the learned Counsel for the Company, in reply to this part of the argument observed that the authorities cited are either not in point or they have only historical value and it was not necessary to make reply to this aspect of the question in detail. He, however, contended that the Pay Commission Report deals with living wage and as observed in paragraphs 48, 49 and 50 of the Report the pre-war level of prices *viz.*, Rs. 30/- per mensem would have represented the standard minimum required by a working class family of three

consumption units in certain parts of India. and furthermore the application of the minimum wage rule has been recognised subject to limitation imposed on the general economy of the country. The learned Counsel also urged that a living wage of the type defined in the Report was an ideal wage and could not be granted by the industrial concerns. He also referred to the principles laid down in the Fair Wage Committee Report and maintained that educational, medical and other facilities afforded by the employers to the workers should also be a matter of consideration in fixing wages. It was stressed that the principles upon which the Labour Union has relied upon as enunciated in the authority cited by Shri S. K. Basu are not the only guided principles in the fixation of wages and the one outstanding principle is that of productivity upon which the fixation of wages can be based. It was emphasised that in fixing the scales of pay it shall have to be considered that they do not go out of tune of the production and that furthermore the scales are determined in industry-*cum*-group. The argument precisely was that the analogy in the matter of fixing of wages should be confined only to oil industry forming one group and not other industry. This principle it was urged was also accepted by the Labour Appellate Tribunal of India in the case of Buckingham & Carnatic Mills Ltd. case (reported in Labour Law Journal—September 1951—page 314) as well as by Mr. Justice Varma in his award at page 104 of his award. It was argued that Mr. Justice Varma was well aware at the time of making award of the principles of Fair Wage Committee and other authorities relied upon by the other side and as such there was no error in the previous award and it was wrong to say that the same was not made on scientific basis. It was next argued that we are more concerned with West Bengal and not with U.S.A., Canada and other foreign countries whose tables of wages have been adduced in evidence.

The authority cited by both sides and discussed above wherein certain leading principles have been enunciated may form useful reading but I think it will be sheer academic if not pedantic on my part to lay down any rule of my own in the matter of fixation of wages when this matter has already been elaborately examined by the Labour Appellate Tribunal in their authoritative pronouncement in the case of Buckingham & Carnatic Mills Ltd. The question of fixing wages was posed in this case on the following factors:

(1) Productivity of labour,

(2) Prevailing rates of wages in the same or similar occupation in the same or neighbouring locality,

(3) The level of National Income and its distribution,

(4) The place of the Industry in the economy of the country.

Shri Sen also adopted these rules in his arguments and contended that in view of these factors no case was made out for revising the pay scales.

Shri Basu as discussed above however referred to various other factors in the determination of the fixation of wages. Judged in the light of the above noted rules, now the assessment on the basis of the productivity of labour is indeed very difficult in this case for the simple reason that in an oil industry it cannot possibly be predicted that what lies in the bowels of the earth. The production depends upon the oil which comes out of the earth by digging and the question of production is always uncertain. Productivity moreover depends on various other factors *viz.*, the type of the machinery installed, as well as the technical efficiency which rests more or less with the covenanted staff not with the general labour as the workmen are called. In regard to the prevailing rates of wages in the neighbouring localities the real position with this industry is that it is located in a far flung place in Assam State and there is no other similar industry in the neighbourhood for the purpose of comparison. In principle this factor may be an important one but in actual working for want of similar industry this factor by itself cannot be applied in this case. The question of national income to my mind has little bearing on the question of the emoluments of the industrial workers. The *per capita* national income as considered in the Buckingham & Carnatic Mills case by the Labour Appellate Tribunal furnishes only hypothetical figure arrived at by taking an average and has, if at all, a remote bearing on the question. This much however is a matter of consideration that the wages of the workers should not be in the words of the Labour Appellate Tribunal "violently out of proportion" to the *per capita* national income. The one other factor is the capacity to pay. This Company has admittedly the capacity to pay higher basic wages but this question is again to be considered from several other aspects. The argument of Shri Basu was that the capacity to pay is a factor which is to be considered on the basis of collective bargaining in order to come up to the approximate living wage. The argument exactly is that in individual cases it may not be

correct to say that one man should pay more than the other for the same job but in industrial and commercial concerns where the duty of the management is to bring the wages from minimum wage to fair wage and from fair wage to approximate living wage, those who have the capacity to pay more should pay higher wages which the smaller industry cannot afford to pay. On the other hand Shri Sen strenuously contended that oil industry by the very nature of its work must have more accumulated profits in order to enable the Company to meet unforeseen losses which occur more often in the experiment of digging process. He proceeded that the labour under-estimates this and do not feel responsible that if more expenditure is put upon the Company, how new experiments could be made to run the work. It was urged that the labour cannot claim the increase in wages sheer on the plea that the Company has the capacity to pay. The question to my mind is not so simple as it looks on the surface and admits of close examination of the general subject of profit. The concept of profit have been the subject of historical controversy. The one question which falls for consideration is that of the relation between the wages and the profits and secondly as to how profits should be measured and utilised more especially in industrial concerns who have necessarily to sink good deal of money in bringing about uncertain profits. The desire of the labour to gear wages on the basis of capacity to pay is not peculiar or repugnant to the idea that a prosperous industry should pay higher wages with a view to attract labour and to ensure more work but the desire should not be whetted at the same time for more and more demand out of tune with the neighbouring concerns or other industry in the neighbourhood. In an industry as oil industry of Assam Oil Company is the need for mechanization at a large scale and necessarily at high capital is there if one cares to look impartially and I have no hesitation in remarking that this factor should also not be lost sight of, in the demand of fixing wages on the plea of capacity to pay. At any rate no hard and fast rule can be laid down in these matters and the arguments as well as observations made here and there in some of the awards can only work as a guide in the determination of wage structure when one is called upon to do so without elaborating the general discussion any more, what appears to me necessary, is to ascertain the requirements of an employee in a place like Digboi, roughly if not very accurately and if I have succeeded in ascertaining these requirements I think I would not be much wrong in the assessment of pay scales. Now the region in which this industry is situated has no parallel so to say with any town. Digboi is not a big town in itself and is so situated that its whole existence depends on the oil industry. The major part of the population consists of workers whose sole avocation is the service of the Company and there are no other avenues of work open to them or to the members of their family. The essential commodities are mainly imported from outside i.e., from Assam and West Bengal. This one factor would go to show that the saleable commodities at any one big town of these places must be sold at somewhat higher price as compared with the price level prevailing in the towns from where it was imported. The cost of living wage index for Digboi has furthermore not been prepared either by the Government or by the Company and in this respect one has to fall back on the evidence brought on the record in the shape of various tables, charts prepared on the basis of Rice Stores prices of the Company. This process by itself is not so easy and by its complexity bristles with hurdles of which I think the parties are not appreciative as both have stuck to their guns without taking into account the viewpoint of the other side.

Now in assessing the requirements of the workers at Digboi I might consider the oral evidence which was adduced by the Labour Union wherein the witnesses have explained their standard family budgets. The other evidence which is to be considered consists of charts and tables giving the present cost of living which in sooth has relation with the question of dearness allowance but was also relied upon in the determination of the scales of pay. Coming to the actual evidence a large number of witnesses were examined who explained their family budgets and invariably stated that they could not meet two ends and more often run into debts. A list of loans incurred by the workers from the Co-operative Society was also filed Mohd. Ishaque (WW-1) a star witness of the Union who happens to by the Vice-President of that organisation deposed that his circumstances did not allow him to draw full rations and he had to curtail many things from his foodstuffs, clothing and other necessaries of life. The witness states that his family lives at Dibrugarh, his home place, and on an average he has to go twice a month to meet his family members and thereby incur every month about six rupees as railway fare and that he had engaged a part time servant to cook his food at Digboi. He further states that he has built a house at Digboi after taking a loan from the Company under their house building scheme. The witness gives the prices of Rice and other commodities before the previous award and complains that the present price of condensed milk has gone so high that he has not been

able to purchase it for the last 8 or 9 months. The witness proceeds to say that he spends Rs. 18/- or Rs. 19/- on shoes every year and comes on cycle to office but cannot afford to give his clothes to washerman because he has no spare clothes to wear. He has described the various deductions from his monthly pay including provident fund and re-payment of loans on account of house building. The witness states that his basic salary plus Dearness Allowance amounts he had built a house at Dibrugarh and his children are in school at Dibrugarh. to Rs. 191 excluding house allowance. He admits in cross-examination that he had built a house at Dibrugarh and his children are school at Dibrugarh. The sum and substance of his evidence which is given above, is self-explanatory and on its face value not only presents an exaggerated picture but also suffers from curious anomalies.

Habibur Rahaman another Workmen's witness deposed that he was getting Rs. 191 including dearness allowance and house allowance; but still he got a loan of Rs. 600 from the Co-operative Society to repair his house. Giving his family budget the witness states that he spends about Rs. 6 for smoking and pays Rs. 12 to his servant. His real complaint is that the necessaries of life are very dear and his ration expenditure comes to about Rs. 60 per month. This witness is a member of the Works Committee and joined the Company's service at Rs. 35 and now his present salary is Rs. 130 per mensem. Shri J. B. Gupta, another witness, is a Shift Foreman in the Engineering Department. He also complains about the high cost of living at Digboi and gives his family budget. His present pay is Rs. 185 per mensem. T. N. Nair (WW-7) is a Shift Supervisor who while explaining his family budgets complained that he is in arrears with regard to the payment of premiums for want of money and he has no savings except his provident fund. He is insured for Rs. 5,000 on a premium of Rs. 184 to be paid half-yearly. Several other witnesses one from each department were examined and narrated the history of their career and complained of high cost of living in general and the difficulties of their jobs as well as the hardship in their grades. Their evidence is of general nature and not much helpful in determining the cost of living. Some of the witnesses working in the Production and Rig Building Departments complained of the nature of their occupation and dubbed it as hazardous and narrated their particular grievances in that respect. Another batch of witnesses came from the artisans and complained of the Trade Test, halting promotion and favouritism in some of the Departments. About two dozen witnesses were examined in support of their specific complaints against order of discharge, dismissals, warning, withholding of promotion etc. Their deposition also has not much bearing on this issue and need not be discussed here. Some of the witnesses working in Tinsukia also explained their grievances in regard to the hazardous nature of their duties, lack of facilities, as well as hardship in getting proper grades. They also complained that their wages or salaries were not commensurate with the cost of living. Without being very implicit in my remarks for and against this type of evidence suffice it to say that the evidence of a large number of workers explaining their individual grievances with a general and vague allegation that they cannot meet two ends within their emoluments cannot be of any help in the determination as to what is the cost of living index at Digboi. It is a different matter that one may take an impression that the living conditions are not very satisfactory. But in fairness I must say that the family budgets these witnesses have given are on the face of it inflated and if some of them have gone into debts it was due to extraordinary expenses which they incurred. Not one of them produced any account of their expenditure and as such the vague general statement cannot be admitted as conclusive evidence.

Coming to the documentary evidence the Union has filed various charts and tables showing as to what was the cost of essential commodities before 1939 when the cost of living index was 100 and what was it before the previous award of 1949 i.e., of 1948 and what the Rice Store prices indicate so far the present cost of living is concerned. This documentary evidence comprises of several documents exhibited in YY series Of these Ex. YY-12 is a chart wherein retail prices of food articles between Bombay and Digboi are compared. This chart reveals that in November 1951 the price of Rice at Bombay was Rs. 19/12/- while at Digboi it was Rs. 25. Similarly the price of wheat in the same month was Rs. 17/12/5 in Bombay while in Digboi it was Rs. 25/15/-. The prices of gram, sugar, tea, salt, mutton, milk, ghee, potatoes and cocoanut oil are also mentioned and in the last column of percentage, it is in the case of tea only that the price was lower at Digboi by 12 per cent. as compared with Bombay and in the case of all other commodities there has been a high percentage for Digboi as against Bombay ranging from 20 per cent. to 93 per cent. The last high percentage of 93.4 per cent. was in the case of salt. It may be pointed out that the prices for Bombay are quoted in this document Ex. YY-12 from Bombay Labour Gazette, January 1952 (page 580).

while in the case of Digboi the rates are taken from Company's Rice Stores and in case of some of the articles not available in the Rice Stores the prices are based on Digboi market rates.

Ex. ZZ/1 is another document which gives the comparison of food prices of Digboi during the period 1939 and 1951. Rice was sold in Assam Oil Company Rice Stores in 1939 at Rs. 5/12/- per maund, in 1948 it was sold at Rs. 7 per maund and in September 1951 the Company's Rice Stores rate was Rs. 25 per maund. Similarly wheat flour's rate in 1939 was Rs. 4/8/- per maund which rose to Rs. 10 in 1948 and in September 1951 it had gone up to Rs. 26 per maund. Mustard oil rate in 1948 was Rs. 22/8/- per maund and in 1951 it ran up to Rs. 100 per maund. The other articles mentioned in ZZ/1 are vegetables, cooking fat, sugar, spices etc. As borne out from this document it appears that there has been rise in essential commodities excepting non-leafy and leafy vegetables, spices and tea, as well as in fish and mutton. The Union also filed a table giving the prices of food articles as obtained from Digboi market for the years 1948, 1949, 1950 and 1951 but I do not think that any one sided allegation gathered from the market can be treated as a reliable data. There is yet another statement Ex. YY-5 which gives different prices of foodstuffs from April 1949 to September 1951 at Assam Oil Company Stores wherein the average price per maund of Rice in 1949 was shown Rs. 19/8/- which average came down to Rs. 17/10/9 in the year 1950 but again rose to Rs. 20/14/3 in the year 1951. Regarding Atta the average per seer in 1949 was As. 0-10-2. In 1950 the average was almost the same viz., 0-10-1¼. In 1951 the average price of Atta was 0-10-5. Another chart Ex. YY which can be more usefully considered while dealing with Dearness Alowance also explains that for one consumption units the monthly expenditure for bare subsistence comes to Rs. 37/4/7 pies.

On the other hand the documentary evidence adduced by the Company in this connection in Exhibit 21 series is a chart Ex. 21-D wherein the prices of essential commodities viz., rice, atta, sugar, mustard oil, milk meat etc., are mentioned, for April 1949, April 1950 and April to December 1951 as well as from January to March 1952. Regarding the price of rice it is evidenced from this chart that in April 1949 rice was sold by Assam Oil Company rice stores at Rs. 18/12/- per maund. In April 1951 the rate was Rs. 20/10/- per maund. This rose to Rs. 25 in July 1951 and the same rate persists in March 1952. In the case of Atta the rate in 1949 and 1950 was As. -/10/3 per seer and the rate in the year 1952 now is -/11/- per seer. In the case of mustard oil the rate has gone down from Rs. 2/4/- per seer to Rs. 2. In other cases there is a rise of an anna or two per seer and in the case of Bidi there is a fall of Rs. 2 per thousand. Another statement showing the monthly expenditure per family consisting of 4.11 persons of Tinsukia prepared by Shri Deshpande in the course of an enquiry into the family budgets of Industrial workers in Tinsukia was relied upon in the course of arguments. According to these figures the average monthly expenditure of a worker would be as follows:

Food	44/1/5
Fuel & lighting.	4/11/7
House Rent	2/1/4
Clothing and foot wear	4/9/11
House-hold requirements	1/4/9
Miscellaneous	7/6/9
Rs.	64/3/9

In this table, the amount spent on Insurance Premium, Provident Fund deduction and general other items are not included.

The analysis made above of the various documents leads to the only conclusion that there has been rise in the cost of living as compared with 1948 and 1949 when the previous award was made. This is not only evidenced from the comparative charts and tables produced by the Union but also from Ex. 21-D filed by the Company in this respect. This aspect of the question as considered in the matter of pay scales accordingly goes in favour of the Union. The other factors viz., capacity to pay, the exceptional nature of work in oil industry also furnish indications in support of labour's demand. The one aspect of productivity of course, (which forms one of the important factor for consideration) is so uncertain as explained above that it is difficult to say one way or other as to what should be the future financial

position of the Company to checkmate any such impending risks when production is not to the mark as compared with the capital outlay in sinking wells, importing machinery and other unforeseen expenses. It is however not denied as borne out from the speech of the Chairman of Burmah Oil Company (Ex. ZZ/10) that the production for the present has stabilised and the Company's business is going on progressively.

An extract from the speech of the Chairman, Burmah Oil Company (published in The Statesman of July 7, 1951) which was exhibited on record as ZZ/10 reads as follows:

India

"The Crude Oil production and refining operations of Assam Oil Company Ltd. continued at the rate at which they have been stabilised for some years past."

At any rate while giving effect to the accepted principle that every normal worker should be paid a wage which is adequate to promote health and general well being, it is to be considered as to whether the existing scales of pay of the workers at Digboi satisfy this recognised test. In the Fair Wage Committee report the Committee, while considering what living wage is quoted various definitions given by eminent jurist and various labour Enquiry Committees and came to the conclusion that living wage is the target as the same has to be tampered even in advanced countries by other considerations particularly the general level of wages in other industries and the capacity of the industries to pay. Without going into the definitions which have been considered elaborately in the report what I am confronted with is as to whether the existing scales constitute fair wage which admittedly should on no account be less than minimum wage. It is significant to note that while the lower limit of fair wage as observed by Fair Wage Committee must obviously be the minimum wage, the upper limit is equally set by what may broadly be called the capacity of industry to pay, which will depend not only on the present economic position of the industry but on its future prospects. It is, therefore, between these two limits that actual wages are to be determined, regard being had to all the factors already discussed.

This brings me to the questions as to what grades and the scales of pay should be and as to whether the present grades and scales satisfy the minimum wage or touches the standard of fair wage. In this respect according to the existing classification of workers there were two grades in the category of unskilled workers before 1949. Grade A was spread over 8 years beginning with As. -/12/- per day and ending with Re. 1/3/- and Grade B was spread over 7 years beginning with As. -/12/- per day to Re. 1/6/- per day Mr. Justice Varma in his previous award of February 1949 brought down Grade A from 8 years to 4 years beginning with Re. 1/2/6 and ending with Re. 1/5/- and Grade B from 7 years to 6 years beginning with Rs. 1/3/- per day to Re. 1/8/- in the sixth year. The demand of the Union now as laid down in Ex. WW-1 is for Re. 1/12/- per day with an increment of As. -/2/- per year up to Rs 2/8/-. By analysing it it would mean that according to the demand in the case of unskilled workers Grades A and B should go and the unskilled workers scale of pay starting with Re. 1/12/- per day should be spread over seven years with an automatic increment of As.-/2/- per year.

The stand taken up by the Company was that the wages of the daily workers in the first place are adequate and secondly increase in the scales had been recently made by implementing the terms of the previous award and the scales should stand for a considerable time unless and until any change in circumstances be established. This aspect of the question has been considered above and in the light of the dictum laid down by the Labour Appellate Tribunal need not be further dealt with. It is not disputed that Mr. Justice Varma abolished the system of cheap rate ration in kind while making this increase in the daily wage structure. This is also correct that the abolition of ration at cheap rate was done on the asking of the labour itself but it was strenously contended by Shri Basu that the consent was qualified by the demand of maintaining ration shop at the expense of the Company which, it was urged, was not done and the workers suffered in the ultimate analysis. It was argued that what increase was made by one hand was taken of by stopping ration at cheap rate and not maintaining the ration shop at the expense of the Company as demanded by the Union. In view of general dissatisfaction prevailing in labour about the low wages, the discomfort involved and uncongenial nature of work in the oil industry as well as rise in the cost of living: and in the appreciation of the broad principles stated above, as well as the stabilised position of production as borne out from the Chairman, Burmah Oil Company speech (Ex. ZZ/10) and the admitted capacity of the Company to pay I do not think that it would be straining the finance

of the Company in the present state of affairs to any unbearable burden if some increase be allowed as well as by doing away with the Grades A and B which manifestly look odd in the case of unskilled labour. The discrimination in the scales for unskilled labour with a difference of As. -/2/- before the prior award and half an anna according to the terms of the award moreover appears to be much too artificial and stringent. The Company's argument in this connection was that amongst the new entrants one may have some experience and the other be wholly raw in the work and as such two grades were essential. But the argument collapses to scrutiny inasmuch as if any one has some skill and experience why he should not be treated semi-skilled at the very outset. Furthermore the word 'unskilled' imports want of any dexterity or aptitude for any special work and one treated as unskilled is expected to be manual labour only. Judged in the light of this definition I am at a loss to understand why there should be two grades under the category of unskilled. I therefore propose to take all unskilled workmen under one grade and spread their pay scales over 5 years as follows:

Unskilled:

1st year—Re. 1-4-0 per day.
2nd year—Re. 1-5-0 per day.
3rd year—Re. 1-6-0 per day.
4th year—Re. 1-7-0 per day.
5th year—Re. 1-8-0 per day.

Semi-skilled-Improvers and Skilled.—Coming to the semi-skilled it may be pointed out at the outset that Mr. Justice Varma in his previous award at page 106 of the Gazette of India, dated 11th February 1949, bracketed semi-skilled and skilled under one category while revising the scale of pay in their case. Apparently a skilled worker must expect more than the semi-skilled and I think it is fair to treat the two categories separately. In the case of semi-skilled the worker is not expected to possess full skill and naturally will be treated one who is on his way to become a skilled worker. The other factor is of the nature of a job not requiring much skill but at the same time some dexterity in handling the work and one possessing that can be treated as a semi-skilled worker. Accordingly, the wages of a semi-skilled worker must be a bit higher than the unskilled but lower than the skilled. Before laying down the scale of pay for semi-skilled and skilled workers it would be better to state the position taken up by the Union in respect in their statement of claims at pages 19 and 20.

"(II) *Pay Scales proposed by the Union.*—Secondly, the pay scales proposed in the above-quoted letter should cover all categories of workers who have been mentioned in the Company's pay structure as submitted to the last Tribunal, after being properly classified as unskilled, semi-skilled, skilled and highly-skilled workers according to their nature of work. They should then be placed in the new higher scales proposed therein for all workers employees including other skilled men who were placed in a separate group or class as "Artisans" in the past against the Company's previous practice.

"(III) Thirdly, all skilled workers were formally included in only five grades fixed for them including those skilled workers who were afterwards called "Improvers". During this period there were no designations as Improvers or even as Artisans. Some categories of skilled workers were, however, not permitted to rise to the maxima of the lower two Grades called "A" and "B" or beyond certain points in the same. It was during the War that the Company taking advantage of the extraordinary conditions, created a separate Grade of Artisans from other categories of skilled workers who were then placed in many over-lapping, unnecessary and unfair grades along with the Artisans. As regards Improvers, even before February 1947 these so-called Improvers were classified as Artisans.

(2) Later on, of the five grades of Artisans "A", "B", "C", "D" and "E" pay scales of A and B Grade Artisans were combined and they were reclassified as "Improvers". The Company were calling A Grade Artisans as Improvers sometime before this combination, though they were all through known as A Grade skilled men as they really were. Even at the time of combining A and B Grades into a single Grade of Improvers, the Company called only A Grade men as Improvers. B Grade men were still regarded as Artisans as they were really a higher type of skilled workers according to the very gradations of Artisans. Evidently, therefore, a greater injustice was done to them by degrading them to the position to Improvers along with A Grade Artisans. For the sake of conciliation which was amicably proceeding at that time, the Union had to take what was offered for they could not also very well reject the immediate benefits and a better time scale for a larger

number of workers. It had no better alternative but to make the best of the bargain with the hope of rectifying the injustice of giving them all a misleading designation of Improvers although they were and really are skilled Artisans They were quite competent skilled hands in their own jobs. There was, therefore, no justification for calling them "Improvers" and putting them all including even B Grade Artisans in a Grade lower than what was afterwards fixed for the lowest class of Artisans."

Be that as it may, I am of the opinion that it would be more in the interest of harmony and co-operation of the labour and capital to understand each other and simplify the position instead of confusing it by all sort of cumbrous procedure which foments discontent when workers of the same calibre find themselves placed in different position and varying emoluments.

Accordingly in fixing the scales of pay for semi-skilled, the straight way of meeting the situation is that they must get wages somewhat higher than the unskilled and necessarily lower than the skilled. Now in the case of semi-skilled workers the demand of the Union is Rs. 2/4/- per day with an increment of As. -/2/- per year up to Rs. 3 and threafter with an increment of As. -/4/- per year up to Rs. 3/8/- per day. The demand obviously is an inflated one. A semi-skilled worker or in other words one who is acquiring some skill must be placed above one who is an unskilled worker, and is on the top of that category i.e., one who is getting Rs. 1/8/- per day. The scales of wages of semi-skilled would therefore be as follows:

Semi-Skilled:

1st year—Re. 1/10/- per day.

2nd year—Re.1/12/- per day.

3rd year—Re. 1/14/- per day.

4th year—Rs. 2 per day.

5th year—Rs. 2/2/- per day.

6th year—Rs. 2/4/- per day.

Coming to the case of Improvers there is some confusion which has arisen due to proper arrangement of the category of Improvers in the scheme of three categories of Unskilled, semi-skilled and skilled workers. The Union in their statement of claim while dealing with the case of Improvers treated them as Artisans and as such skilled workers. It was said in clear terms that some categories of skilled workers were not permitted to rise to the maxima of lower two grades A and B and a separate class was created, the so called Improvers. In the light of this statement of claim Improvers in the existing arrangement stand in-between semi-skilled and skilled workers. But in Ex. WW/1 wherein the demands were formulated in a tabular form the Improvers were shown along with semi-skilled and Mr. Ahmad Joint Secretary of the Union in his statement also deposed that the Improvers should be treated as semi-skilled. This gave rise to certain misgivings and the point was clarified by calling the parties. Both sides agreed that the Improvers in the present arrangement are mostly those who are not treated as fully equipped Artisans and are termed Improvers to be taken as skilled workers after due course of training. At the same time it was pointed out that some of the Jugalis before coming up to the category of semi-skilled are also being treated as Improvers before accepting them in the category of semi-skilled. The position boils down to this that a number of old Artisans have been held up in the category of Improvers before being accepted as full fledged Artisans in the category of skilled workers, and there are also new hands who are treated as Improvers in between the unskilled and semi-skilled workers as said above. The result is that a new category in between the unskilled and semi-skilled as well as in between semi-skilled and skilled has grown up which causes confusion and is likely to foment discontent. On anxious consideration I have come to the conclusion that this category must go. It was also not denied by the Company that his category of Improvers did not exist earlier and was only introduced after the termination of the war. The general reply of the Company was that those who show improvement in their work are treated as Improvers for some time before they are enlisted in the category of skilled workers This arrangement naturally impedes the way of passing the stages already fixed viz., one of unskilled, semi-skilled and skilled. I would therefore direct that the category of Improvers should be abolished and they will be treated henceforward as semi-skilled workers or skilled workers and will be absorbed as such, according to the revised scales without staggering anyone who is drawing more wages at present, either as semi-skilled or skilled worker.

Illustration:

If a worker is placed in between semi-skilled and skilled and is called Improver he shall be absorbed in the category of skilled and will get the wages of a skilled worker. If a worker is placed in between unskilled and as semi-skilled and is called an Improver, he will be absorbed in the category of semi-skilled and will get the wages of a semi-skilled worker.

This brings me to the last category of daily workers, viz., skilled workers. Regarding skilled workers it will be seen that they embrace various jobs viz., Artisans Senior Artisans, Fitters, Head Fitters, Head Mistries, Turners, Mechanics, Technicians and Head men of various Departments and others. The demand of the Union in their case is as follows:

Ex. WW/1

"*Skilled workers*

Grade I.—Rs. 3 per day with an increment of annas 4 per year up to Rs. 5.

Grade II.—Rs. 4 per day with an increment of annas 4 per year up to Rs. 5 and thereafter with an increment of annas 8 per year up to Rs. 6.

Grade III.—Rs. 5 per day with an increment of annas 8 per year up to Rs. 7.

NOTE.—The above Pay Scales should be applicable to all departmental workers including specially skilled, seniormost artisans and other workmen, head mistries, head fitters, turners and other head men."

The demand on examination boils down to this that an Artisan beginning with Rs. 3 per day according to demand would go up to Rs. 7 per day in the course of 5 or 6 years with the benefit of Dearness Allowance and other amenities which the Company provides *viz.*, House rent or residential quarters. This demand also appears to be pitched high and does not fit in with the economy of the country. Applying the principle adopted in the case of unskilled and semi-skilled, all skilled workers are placed in the following grades and scales of pay:

Skilled

Grade I

1st year	. . . . .	Rs. 2/6/- per day.
2nd year	. . . . .	Rs. 2/8/- ,,
3rd year	. . . . .	Rs. 2/10/- ,,
4th year	. . . . .	Rs. 2/12/- ,,
5th year	. . . . .	Rs 2/14/- ,,
6th year	. . . . .	Rs. 3/- ,,

Grade II

1st year	. . . . .	Rs. 3/4/- ,,
2nd year	. . . . .	Rs 3/8/- ,,
3rd year	. . . . .	Rs. 3/12/- ,,
4th year	. . . . .	Rs. 4/- ,,

Grade III

1st year	. . . . .	Rs. 4/4/- ,,
2nd year	. . . . .	Rs. 4/8/- ,,
3rd year	. . . . .	Rs. 4/12/- ,,
4th year	. . . . .	Rs. 5/- ,,

I have tried to avoid over-lapping and put the skilled workers in three grades in order to obviate the inherent complications in the system already in force. It is hoped that this simple arithmetic would prove more helpful in the determination of wages and would meet the requirements of labour, without unduly straining the finance of the Company.

Next is the case of apprentices. In the previous award Mr. Justice Varma made an increase in their wages as follows:

Apprentices:

"Prior to 1949		Proposed (by Mr. Varma)	
1st year	0 14-0 per day	1st year	1-3-0 per day
2nd year	1-0-0 ,,	2nd year	1-5-0 ,,
3rd year	1-2-0 ,,	3rd year	1-6-0 ,,
4th year	1-4-0 ,,	4th year	1-7-0 ,,
5th year	1-6-0 ,,	5th year	1-8-0 ,,"

To my mind their case can be justifiably resolved when considered in the light of cardinal principle laid down for the determination of pay scales of semi-skilled workers. An Apprentice manifestly is one who is under training in the art of using tools, handling machinery and other skilful works. It is in evidence that they undergo training for about five years and work on various jobs in the course of their training and as such they cannot be treated as unskilled or wholly skilled and must therefore be taken as semi-skilled. In accepting them as semi-skilled the scales already fixed for semi-skilled workers would naturally apply in their case. As the period of apprenticeship is five years. Their scales will come as follows:

Apprentices:

1st year	...	Rs. 1/10/- per day
2nd year	,,	Rs. 1/12/- ,,
3rd year	...	Rs. 1/14/- ,,
4th year	...	Rs. 2/- ,,
5th year	...	Rs. 2/2/- ,,

The next category is of Youths other than apprentices. Their case was fought by the Union with some vehemence while referring to the hardship of youngmen working in the factory and being treated only as boys notwithstanding of the fact that they put equal work. The argument urged on their behalf in the statement of claim may well be quoted as under:

"XIII. *Pay Scales for "Youths (other than Apprentices)"*.—(1) In the Company's pay structure as was submitted before the last Tribunal, under the above-quoted heading a pay scale for "youths over 14 to 20 years of age was given. Obviously, this was meant for only few office boys who did not come under the Factories Act or the Mines Act. That is why the Company were still using the out-of-date term "youths" to describe even those workers who were really "adults". This was against the lawful definition of adults in the Indian Factories Act and in the Indian Mines Act. Before the Award, they were, however, in fairness, still paying youths at the age of even 17 years no less than 13 annas per day, i.e. even higher than the minimum rate fixed for even any "adult job" of unskilled nature. In fact, they were paying the so-called "youths of 18 and 19 years of age two to three annas more than the minimum adult rate for any adult job.

(2) To make the position perfectly clear, the following condition was specifically mentioned in the foot note of the pay scale for "youths" according to the Company's own pay structure submitted to the Tribunal:

> "On being transferred to an *adult job* on or after reaching the age of eighteen they will retain the same rate of pay until next increment is due" [Annexure 4(b)].

"The same rate here necessarily meant annas fourteen, *i.e.* two annas more than the minimum rate fixed for any adult job. Thus they clearly differentiated the job of "youths" other than apprentices from all adult jobs of all categories of workers for whom separate pay scales and grades were fixed both by the Company and the Tribunal accordingly."

Mr. Justice Varma in his award at page 107 of the gazette have treated them age-wise and spread their wages over seven years commencing from the age of 14 to that of 20 years. The wage for a youth of 14 years was fixed As. -/14/- per day and for a youth of 20 years Re. 1/2/- per day. The Company in their written statement have only stated that they have followed the direction of the previous award and that there was no justification for revision. Shri S. K. Basu arguing on behalf of the Union referred to the provisions of the Factories Act in this respect and maintained that the word used in the Factories Act for youths is 'Adult' which means a person who has completed his 17th year and under section 52 of the said Act a certificate of the Medical Officer of fitness is necessary, to show that he is fit for a full day work in a factory, and on the grant of a certificate he will be deemed to be an adult for the purposes of Chapter IV which deals with restrictions on working hours of adults. It was urged that these provisions are not being applied in the Assam Oil Company. Regarding the wages of youths the argument of Mr. Basu precisely was that they should be treated equal to a man worker on the principle of equal pay for equal work. It is, however, not clear under the Factories Act as to the wages for adults but judged in the light of these provisions the present position although based on the previous award cannot be allowed to exist. The result is that only adults will admitted in the service of the Company and their wages will be determined according to their work as unskilled, semi-skilled or skilled without making any discrimination on the point of age. It may however be pointed out that those office boys who do not come within the purview of Factories Act can continue and the demand of the Union in their case is that they should get Re. 1/4/- per day with an increment of As. -/2/- per year up to Re. 1/12/- and thereafter with an increment of As -/4/- up to Rs. 2/4/-. The Union treats them on daily wage scale. This does not appear to me reasonable inasmuch as office administration is being run by clerical staff on monthly-rated basis. Office boys who generally perform odd work as a peon may well be taken out of the factory daily rated system and be treated on monthly rate basis. As their case was not considered in this light, it is left to the discretion of the management to convert the office boys to monthly-rated basis henceforward in the matter of wages fixing their salary, what they consider proper and just.

Before going to the case of clerical staff, I may say in passing that Shri S. K. Basu in the course of arguments on issue No. 1 *viz.*, 'Revision of Pay Scales' referred me to the comparative wages prevailing in U.S.A. in regard to the daily rated workers like Mechanics, Foremen, Artisans, Storemen, Oilmen, Pumpers, Operators, Tractor Drivers etc. and produced a chart based on Exhibits XX-10 showing that the wages of Artisans and Factory workers at Digboi were much too low as compared with the wages per day of labour in U.S.A. I have perused this chart and find the glaring disparity in the wages of workers in U.S.A. and that of Digboi. But this chart is of no practical value for the simple reason that U.S.A. is fabulously rich and it is futile for a worker in India to adopt the standard of living of U.S.A. or to expect the wages of a country whose national income bear no comparison for the purpose of analogy.

Regarding clerical pay scales and other monthly rated staff.—The demand of the Union is detailed in Ex. WW-1 and starts with Rs. 80 in Grade I per month. Rs. 190 in Grade II and Rs. 260 in Grade III; and ending with Rs. 180, 250 and 300 respectively. Mr. Justice Varma in the previous award made an increase of Rs. 10 all round in all grades beginning with Rs. 60 in Grade I, Rs. 110 in Grade II and Rs. 175 in Grade III and Rs. 210 in Grade IV ending with 255. No special pleading or specific argument was advanced by the learned Counsel of the Union for an increase of salary of clerical staff excepting general argument that the cost of living has gone high and the scales fixed by Mr. Justice Varma are not adequate. The question of cost of living has direct bearing with Dearness Allowance and when I compare the scales fixed in the previous award only two years back with the scales of the clerical staff of Government Offices I see no substance in the demand. An increase of Rs. 10 all round unlike an increment of an anna or two in the case of workers and Artisans in the previous award appears to be a marked improvement in the lot of clerical staff. In this world of ever growing expenditure one is apt to ask for increase at all times but when adjudged on material facts and stern realities, the grades and scales of pay for clerks already fixed are quite adequate and I do not think call for any interferance.

Typists, Stenographers etc.—In the previous award the case of Typists and Head Typist were duly considered and an increase of Rs. 10 was made in both. This time the Union in their demand embodied in Ex. WW-1 have treated this

category into more than one designation *viz.*, Typists, Stenographers, Seniormost Typist, Section Incharge and Steno-typist and have made a demand of new grades I, II and III in their case. It was not stated as to how new grades can be introduced or a certain category can be divided into more designations. There was no specific issue that any more designations are to be added in the clerical staff. I would therefore confine myself to the previous headings shown in the award of 1949 whose revision is asked for in the issue. As said above in the case of clerical staff, I do not think any case has been made out for further increase in the pay of Typists, Head Typist or others also working under this category.

Comptometer Operators.—The demand of the Union again in their case is to split them into two grades beginning with Rs. 100 and Rs. 210 and ending with Rs. 200 and Rs. 300 respectively. In their case also an increase of Rs. 10 was made in the previous award and they stand now in the grade of Rs. 90—10—160. The Union wants to introduce new grades although they objected to more grades in the case of Daily rated workers and wanted to bring down the number. I do not find that a case has been made out for the introduction of any new grades in this particular category of workers. But appreciating their nature of work which relates to accounts I would only extend the grade from 90—10—160 to Rs. 90—10—190, in order to keep their standard somewhat higher than ordinary Typists and Stenos.

School Staff and Medical Department Staff.—Before coming to the merits of the case with regard to these departments as to whether any increase in their salary and grades can be made, I have to dispose of an application, dated 8th March 1952, filed by the Company in which a legal objection has been raised that the issues and matters relating to the employees of these departments do not amount to industrial dispute inasmuch as these departments do not form part of oil industry. In the last paragraph it was specifically mentioned that the Company does not wish to prejudice the hearing of individual cases already referred to before the Tribunal. Shri Sen on behalf of the Company in the course of arguments referred to full bench decision of Labour Appellate Tribunal (Labour Law Journal—June 1952, page 783) 'United Commercial Bank *Vs.* Kedar Nath Gupta' and contended that the employees of these departments do not fall within the ambit of the Act under Section 2(s). In this case the Labour Appellate Tribunal held that the words 'any person' in section 2(s) were co-extensive with the word 'workman' and could not cover an officer or other member of the managerial staff. It was not decided in this case as to who workman is. The position taken up by the Union in this respect was that the establishment and employees of school and hospital have always been treated as 'workmen' by the Company as admitted by them in the written statement before the first Tribunal and even now in his reference. It was also stated that the Company cannot go out of their own pleadings when this objection was not raised in their written statement and the terms and conditions of service and the pay scales of the school staff and of medical department have all along been set forth along with other workers in the employment of the Company. On the perusal of the written statement and other documents brought on the record wherein the terms and conditions of services and pay scales of the staff of these departments are set out I find that the Company have never differentiated these services from other workers of the Company. It was moreover admitted that the employees of these departments even in the matter of Provident Fund and bonus have been treated on the same footing with other workers, bonus was paid to them for 1947 and 1948. It is a different matter that these departments are working as welfare departments but they have always been treated as a part and parcel of the Company's employment and it is too late in the day to urge that their cases be not considered for the purpose of the revision of pay scales. The employer as said above has also stated in this application that this objection would not prejudice the individual cases of these departments. This manifestly indicates that the cases of the employees of Education and Medical Departments in the matter of dismissal, discharge, promotion, leave etc., can be heard and have actually been heard on the motion of the employer by the Tribunal. Judged in the light of this admission it is futile to argue that they are not workmen for the purposes of pay scales and other matters. The objection is therefore over-ruled.

Now the scales of pay of the Education Department as revised by Mr. Justice Varma by his award of 1949 stand as follows:—

School Staff

Present	Proposed
H. & M.E. Schools :	
A. Normal trained non-Matriculates or Matriculates without training :	
Rs. 50-4-90-5/2-120	Rs. 60-4-100-5/2-130

School Staff

Present	Proposed
B. Normal trained Matriculates and I.A., I.Sc., without training :	
Rs. 50-5-95-5/2-120	Rs. 60-5-105-5/2-130
C. B.A. or B.Sc. without training or I.A., I.Sc. with training :	
Rs. 60-5-95-5/2-120	Rs. 70-5-105-5/2-130
D. B.A., B.Sc. with training :	
Rs. 70-5-120-10-140	Rs. 80-5-130-10-150
E. Headmaster/Headmistresses :	
Rs. 100-10-150	Rs. 110-10-160
Rs. 165-10-195	Rs. 175-10-205
Rs. 205-220	Rs. 210-225
Second Masters/Mistresses :	
Rs. 90-10-140	Rs. 100-10-150
Primary Schools :	
Guru trained and non-Matriculates without training :	
Rs. 45-3-75-5/2-85	Rs. 55-3-85-5/2-95
A. Normal trained non-Matriculates and Matriculation without training :	
Rs. 50-4-90-5/2-120	Rs. 60-4-100-5/2-130
B. Normal trained Matriculates :	
Rs. 50-5-95-5/2-120	Rs. 60-5-105-5/2-130
C. Not applicable.	
D. Not applicable.	
E. Headmasters/Headmistresses*	
Rs. 100-10-140	Rs. 110-10-150

(*must be B. T. or normal trained).

The above comparative table of pay scales of the staff shows that an increase of Rs. 10 all round was made in the prior award and in the absence of any definite evidence fresh increase is not called for. Of course I do feel that the emoluments of the Education Department employees, regard being had to their University qualifications and the noble calling of imparting education, requires encouragement as their salaries when compared with artisans and clerical staff are low and would recommend to the Employer to revise their scale according to their academic qualifications.

Regarding the Medical Department Mr. Justice Varma did not revise their scales on the plea that the employer of their own accord had recently revised their scales and considering their nature of work the pay of the members of the Medical staff was adequate. I have looked into the pay scales chart of this Department (Annexure I attached with the written statement) and find that the scale of nurses begins from Rs. 80 and with two efficiency bars goes up to Rs. 250. There is a note also to the effect that nurses with two years experience may be recommended for engagement at higher rate of pay. The demand of the Union in their case is for Rs. 100 starting pay with an increment of Rs. 10 per year up to Rs. 200. Similarly, in the case of senior nurses the Company's scale begins from Rs. 130 and goes up to Rs. 205. The demand of the Union in their case is for Rs. 220 with an increment of Rs. 10 up to Rs. 300 and thereafter with an increment of Rs. 25 up to Rs. 375. The salary scale for staff nurses is Rs. 205 up to Rs. 250 and it goes to Rs. 350 as maximum. Obviously the demand of the Union when judged with the present position is not reasonable and it appears that an increase of Rs. 20 has been asked for all round, in general. The Compounders start with Rs. 65 and go up to a maximum of Rs. 145. The demand of the Union is for a start of Rs. 90 with maximum of Rs. 260. The demand manifestly is inflated in view of the

Training and educational qualification of this class of employees. In other cases *viz.*, Ward Assistant, Operation Theatre Assistant, Anti-malarial Assistants, Pathological Assistants, X-Ray Assistants, I also find that the existing scales are adequate and need no change for the present. Regarding midwives the present scale starts with Rs. 50 and goes up to Rs. 100. The Union demand is for a start of Rs 70 per month going up to Rs. 180. In their case the avocation requires special labour and I find that the scale cannot be called adequate . I would, therefore, extend their scale starting from Rs. 60 per month with an increment of Rs. 5 a year to a maximum of Rs. 110. Before leaving this department it may be pointed out that the subordinate staff of medical department *viz.* Mali, Sweeper, Chowkidar, Cook, Butler, Hospital Attendant and several others mentioned in Annexure I under the Medical Department of course will receive wages at a revised rate under the category of unskilled, semi-skilled and skilled grades. Theatre, X-Ray, Pathological Laboratory and Anti-malarial Assistants are also mentioned in daily wages but I think they as an Assistant perform a duty which is more akin to those working on monthly basis. The Union demand in their case is for a start of Rs. 80 per mensem with an incremant of Rs. 5 per year up to Rs. 110 and thereafter with an increment of Rs. 10 up to Rs. 250. At present they are getting Rs. 2/2/- per day up to Rs. 4/14/- corresponding to Rs. 64/- and Rs. 145/- approximately. The scale appears to be quite adequate. I would however recommend that the daily wages of office boys be converted into monthly wage and the salaries adjusted accordingly.

Finally, it is directed that the revised scales of pay described above shall come into force within one month of the publication of award or from the date when the award becomes operative whichever is earlier and the wages and salaries of all the workers shall be adjusted in consonance with the revised scales according to the length of their service in the grades and next usual increment will be given at the time when it falls due subject to rules.

Issue No. 30/26.—The other issues *viz.* 31 and 26 which were discussed along with Issue No. 1 as said above may be reproduced as under:

(31) "Classification of all categories of workmen and fitting them in respective scales and grades of pay".

(26) "Classification of jobs of the workers dealing with the work of drilling, Rig building, Production etc., as well as for the removal of grievances of chart calculators of production and midwives."

The demand for classification is explained in the statement of claim at page 29 under Clause I(B). The grievance of the Union is that the workers are not properly classified according to the nature of their work, skill and responsibility etc. It was averred that this point was also posed before Mr. Justice Varma at the time of first adjudication but he did not go into the technicality of the question on its merits and that this time the demand is being pressed in all seriousness. The Union demand is embodied in their statement at page 3 and is as follows:—

"According to no known standard, practice and reasonableness, such workers as Tradesmen helpers, Rigmen, Cask Filling Testers, Printers, Map Colourers, Helpers, Jugalis of Artisans and other skilled workers, Leak-repairers, Printing Machine Operators, experienced Store Jugalis, Oxygen Plant Attendants, Test Darrick Rigmen, Fireman of Asphalt Boilers and Steam Road Boilers and even skilled Firemen of Fire Service and Laboratory Samplers and Testers on probation and similar other workers can fairly be classified as unskilled workers. Their very designations show their nature of work and thoroughly expose the manner of the Company's classification to its true colours.

"In all fairness and according to the recognised standard and practice, they ought to be classified as at least semi-skilled workers and a number of them like Firemen of Fire service, Printing Machine Operators, Testers Leak repairers, solderers, Firemen of Boilers, deserve to be classified as skilled.

"(3) Similarly, many other really-skilled workers have wrongly been classified as semi-skilled. These categories of workers, to give some instances, include various Machine Operators, Engine Drivers, Machinists, Crease Line Fitters, Assistant Tindals, Firemen, Solder-makers, Rivetters, Tank Dippers, Class I Testers, Chambman, Pumpmen, Storemen, Horn Press and Spare Operators, Barrel Repairers, etc. They are quite skilled enough to be classified as such and placed in the lowest grade proposed for the skilled workers.

"(4) Lastly, all skilled and semi-skilled men including highly skilled and responsible Headman of vitally-important departments like Drilling, Production and Rig Building, as the Union has already pointed out, have been given no classification at all. They take strong exception to their being still called "gangs". It is high time when they ought to be classified as other workers and placed in their respective pay scales along with other skilled and semi-skilled workers. Rigmen should be classified as semi-skilled, 4th/3rd men as skilled in Grade 1, 2nd man as skilled in Grade 2 and Headmen as highly-skilled in Grade 3 and senior and highly-experienced among them in the monthly-rated scale."

On the other hand the position taken up by the Company in their written statement is stated as follows:—

Page 6 of written statement: "*Classification of Workers.*—The Company opposes the Union's demand which in its opinion is baseless. The question of classification of workmen was brought up before the last Tribunal by the Union and the Tribuanl refused to interfere as it found that the classification made by the Company was quite good. The classification proposed by the Union in its written statement is arbitrary. The Company therefore submits that the Union's prayer should be refused, particularly in view of the findings made by the previous Award."

It would also be proper to incorporate the view taken in the previous award by the then learned Chairman of the Tribunal in order to complete the picture and this is also reproduced as under:

"So far the classification of the service is concerned it will have to be remembered that in this concern it is not only one kind of work that is being carried but that various kinds of works are being carried out. The classification made by the Company is quite good. I do not want to interfere with it."

Now the classification of workers admittedly was made pretty long ago and the Company in the course of argument produced certain charts showing designations and the rates of pay before and after 1949 award for the assistance of the Tribunal to grasp the position with regard to the scales of pay and the job each of the worker was performing while in the service of the Company. A copy of these charts Ex. T.1 was also supplied to the Union side to take note of the position explained therein for the purpose of reply. Without going into the scales of pay and wages which have already been discussed and considering only the designations given in this Exhibit T.1 and divided under three categories unskilled, semi-skilled and skilled, it may be noted that under unskilled labour there are about 70 different designations mentioned in chart A (of file Ex. T-1). Similarly under the category of semi-skilled there are about 150 different designations mentioned in part E of the aforesaid File. The skilled labour is mentioned in charts B and D giving the number of designations 28 and 33 respectively. While chart C relates to clerical staff. It would come to this that the number of jobs is about 300 leaving a margin of some other petty jobs which may not have been noted and the Tribunal is called upon to classify each one of them regard being had to their nature of work, aptitude and the amount of dexterity as well as the risk and disagreeableness etc., connected with the work.

Mr. S. K. Basu, learned Counsel for the Union, dilating upon the demand reiterated the reasons already given in the statement of claim and further argued that this matter was not considered in the previous award and the statements of various workers amply prove the injustice done in the matter of classification.

The relevant extracts from the statements of W. Ws. are quoted as below which would explain their grievances. In this respect Mohd. Ishaque (WW-1) deposed as follows:

"According to our demand so far the categories of jobs are concerned viz., unskilled, semi-skilled, skilled and highly skilled and some special jobs of technicians and miscellaneous relating to other Departments, these are quite alright. According to the Union's demand I would say that an unskilled man would be he who is new to the employment to carry bags, to cut jungles, cleaning and sweeping of godowns and such allied jobs; a skilled worker would be such as a fitter, carpenter, electrician. A worker can be termed semi-skilled who are helping the carpenter and can use his tools to some extent. A highly skilled

worker must be well versed in his skill and the work done by him. of course I cannot say how long it might take him to be termed highly skilled".

WW-5 Aswini Kumar Dutta stated that there is no classification of jobs for workers employed in different grades. The work that one is called upon to do in Grade I is the same in nature and scope which is done by workers in the higher grade. The witness stopped short here so far classification goes and deposed about another matter. Another witness (WW-7) Madhavan Nair stated that the Union is claiming the tradesman helper to be classified as semi-skilled because he is helping a skilled worker and his very nature of work requires some skill. Junior Refrigerator mechanic who is shown in Company's scheme as semi-skilled to be treated as skilled according to Union's demand because the nature of his demand wants highly technical and requires good skill. This applies in the case of others in whose case demands regarding scale are in Ex. J. Similarly refrigator mechanics should be treated as highly skilled because they are the authority incharge of this branch of engineering. The witness furthermore deposed about tests and other matters. WW-9 J. K. Sarkar deposed that he received training but got no increment and that he has four painters and eight jugalis working under him and that he should be classified as highly skilled worker. He is working as a painter in Construction Engineering Department. WW-10 Raghu Nath Sarkar also deposed that in the Field Transport Department workers including the witness have got to exercise considerable knowledge of materials and skill in identifying them because the materials and goods of various departments are kept in one place and they are to know their names and sizes in order to be able to pick them out and perform the job of carrying them. WW-11 Kailash Ch. Dutta states that the Company have described two categories of workers in the Field Chemist Department viz., senior samplers and samplers to do the same work in drilling wells and we claim that this classification is unfair. WW-15 Man Bahadur Thapa states that the work of a Fire Brigade requires some knowledge and his demand is that he should be treated as a highly skilled worker and his pay should be monthly rated. The firemen are treated unskilled by the Company, but they are skilled workers and should be treated as such. Leading firemen should be classified as highly skilled workmen. Trailer Pump Drivers are also highly skilled and be classified as such. WW-16 Abdur Rahaman who is a headman in the Production Department deposed on behalf of headmen that headmen are highly skilled second man skilled and third, fourth and second man are semi-skilled. WW-17 D. Mercor of Telephone Department pleaded the cause of telephone fitters for treating them as skilled artisans with no test for the purpose of increment. He also stated that tradesmen helpers should be treated as semi-skilled. WW-18 Omar Ali, a head Mistry in the Rig Building Department deposed that mistries should be treated as skilled men and the jugalis who work with them as semi-skilled. WW-20 G. K. Daura, who works in the Drilling Department, has stated as under:

> "I know the distinction between the semi-skilled and skilled workers. The man who know half the work are called semi-skilled and those who know and can take full responsibility are called skilled workers."

There are several other W. Ws. who in the course of their statements touched this phase of classification. Their main evidence relates to their own grievances all round and as Shri Basu did not refer me to any particular statement I think it is not necessary to find out these detached extracts from the statements of all witnesses. I would finish with this evidence with the statement of WW-35 Mohendra Chandra Dey Sarkar and the Secretary of the Union. Shri Sarkar is a fitter at Tinsukia and deposed as below:

> "All machine operators, leak menders, handle solderman belt man, and assistant sirdars should be placed in the skilled grade. He further stated that all mazdoors and oilmen are semi-skilled as they work in place of machine operators in the absence of the latter. They should be classified as semi-skilled on a wage of Rs. 2/4/- to Rs. 3/8/-."

Moulvi H. U. Ahmad, who is the Joint Secretary of the Union, in his detailed statement on 11th March 1952, at page 5 of his statement stated this much only that the classification that the Union would wish for the Improvers as given in the statement of claim. We want them to be taken in the category of semi-skilled.

On the other hand Shri S. C. Sen on behalf of the Company contended that this demand was duly considered in the previous award and the learned Tribunal

did not think it worthwhile to discuss the matter at length and rejected the demand summarily. It was maintained that there was no change in the circumstances as to warrant any interference in the matter of classification which has stood the test of several years. It was next argued that there are several departments in the industry and one worker in one department cannot claim the same designation by the very nature of work, which after due consideration was classified by the Officer-in-charge who is expected to know much more than a worker himself who would naturally aspire for higher designation and as such should not play the role of a worker as well as an Arbiter of his own designation. Reliance was placed on the sworn testimony of Mr. Glover (EW-11), Senior Assistant General Manager of the Company, Mr. B. R. Frazer. Works Manager (EW-12), and Mr. K. C. Roy, Engineer of Assam Oil Company (EW-10), Mr. Thomas Arthur, Acting Drilling Superintendent (EW-9). To begin with the last it would be useful to give relevant extract from the deposition of EW-9 which reads as follows:

"I have been appointed in the Assam Oil Company on three occasions approximating thirteen years service. My experience in the oil industry extends over 26 years. There are three Departments under my supervision, viz., drilling, rig building and cementing. The workmen in these departments have been properly classified on the basis of unskilled, semi-skilled and skilled according to the nature of the work they perform. The determining factors in my view which can distinguish one category of workmen from another may be stated as follows' Unskilled workers carry out manual duties which do not require any skill; semi-skilled workers are those who have been promoted from unskilled grades to carry out duties which do not require much intelligence but require a minor dexterity with some tools; skilled workers are those who have served an apprenticeship in a recognized trade or through service and experience and abillty in the oil field and have been promoted to the skilled class. This entails the skilled use of tools or the ability to operate certain types of machineries. I consider the present compliment of various gangs working at the Rig Building, cementing and drilling in my estimation is adequate because when the gangs were constituted full consideration was given to the work which they would be required to do. In specific cases where we consider more men are required we either increase the number of men in gangs. In Rig Building we increase the number of gangs employed in a particular job. The workmen constituting a gang are properly classified. The table (Ex. 19), produced by me would show the classification of the workers in various departments. Since the award there has been no reduction in strength of the gangs after the award of 1949. The gangs under me do not perform the job of similar nature and skill, as the gangs were constituted for the work they have to carry out in different departments.

"The Headmen of different gangs do not possess the same standard of efficiency because they vary from gang to gang. The Headmen, I consider, as skilled workers but not highly skilled. They cannot perform the jobs independently satisfactorily without supervision What I have stated is evidenced from the document (Ex. 19-A), which I produce in evidence. I do not consider that the workers in my department are highly skilled workmen and can be considered as skilled artisans because the duties they carry out are peculiar to the oil industry, are of rough and heavy nature while that of Artisans are skilled use of tools and certain machineries. The other difference is that the skilled workers in my department do not serve as apprentice while in the case of artisans they serve as an apprentice for certain training excepting of course the Mason and Blacksmith. I do not consider that there is any special risk or danger in drilling and rig building operations other than is general to any outside engineering."

Mr. Glover (EW-11), deposed in this connection as follows:

"Workmen are classified as unskilled, semi-skilled and skilled within those classification workmen are fitted into the pay scales according to the amount of work and the responsibility acquired in their job. The pay scales of covenanted officers stands on a different footing. This is generally correct that the work of an employee in any particular department relate to that department. But this is not necessary that the work of an employee in a department has direct connection

with the other. The driller's work is certainly related to the work of others. There is no comparison between the work of a driller and a headmen in so far as responsibility for work is concerned but there is of course a similarity in the work they do. You can compare the work a headman is doing with a driller doing the same work but of course the driller must be capable of doing work and taking responsibility which a headman is not required. There is no reasonable comparison which can be made in assessing the pays of a driller and a headman on the work they respectively do."

Mr. Frazer (EW-12), also was examined on this point and the relevant portion of his statement is reproduced as under:

"The classification has been made on the basis of the nature of work and the skill and experience required for it. There is chance for unskilled and semi-skilled labour to rise There is an opportunity for promotion for skilled labour. Skilled labour on promotion can become Supervisors or officers. I consider promotion on the basis of ability, knowledge of the work and then on length of service. Shift Tindels and Shift Mistries cannot work independently without supervision. Sirdars of major squads of gangs cannot also work without supervision. I do not consider the Shift Tindals and Sirdars to be highly skilled. I am acquainted with the functions of chambermen Chambermen is put in the semi-skilled category. I am acquainted with the functions of the following categories of workmen viz., Shift Tindals Process Mistries, Class II Testers, Tindals of lubricating oil blending, Senior Tindals of Acid Washing Plant, Alfa Level Plant, Boxide Plant, Edeleanu Plant of Refinding process. I classify them all as skilled workmen. I do not consider them to be highly skilled.

To Tribunal: Every one of them requires supervision and cannot work independently.

To Mr. Ghosh: The headmen of the various squads have been properly classified. I do not consider that the headmen of various squads possess same standard of efficiency and skill because the nature of work of various squads differs and whereas one headman so skilled himself may have under him only semi-skilled or unskilled workers, other headmen will have under them skilled workmen I do not consider that there is any particular risk involved in the refinery operations in all departments. I would however say that all heavy engineering plants and chemical processes contain a certain amount of risk but that the petroleum industry is exceedingly well catered for that respect and we take all recognised precautions and our accident record is very good. I have nothing more to say."

This witness in cross-examination further stated:

EW-12: Xxn. by Mr. Basu: "Without looking up the records I cannot say when the last classification was made. Of course it has been in vogue for a pretty long time. Say at least ten years The same nature of work is being done by the same categories of workers for these ten years. We classified according to the nature of the job, amount of skill and the experience required for it. We assess the skill required for the job by our knowledge of the job. As unskilled job is of manual nature which does not require any previous experience. Company defines a skilled worker as one who has served an apprenticeship to a trade or who has gained experience and training in a specialized industry. Semi-skilled worker is generally recruited from the unskilled category and after a certain amount of training and experience he is able to use tools in a limited sense, his work is mainly repetitive and in general it can be said to occupy the lowest rung of the skilled class. They require a limited manual dexterity. I think these definitions that I have given above are of a general applicability. As far as possible jobs demanding semi-skilled qualifications are given to semi-skilled workmen. Chambermen have to open up the doors at the top and bottom of chambers. When the chambers have been emptied of coke, the chambermen enters those chambers, clean away such coke as is adhering to the chamber walls and then hang the cable in the chamber. On completion of this they close the top and bottom chamber doors. The chamber is emptied by pulling the cable to which I have just referred. The

pulling is done by steam winch. Chambermen are classified as semi-skilled. There is a limited amount of skill required in the hanging of the cable. The hanging of the cable is very largely a purely manual job and as such could be classified as unskilled but a certain amount of experience in it hanging is necessary if subsequent operations are to be smooth. Success of subsequent operations depends on the proper hanging of the cable. Proper hanging of the cable demands experience and a certain amount of training and no skill. As they have certain amount of training I would put them in the category of semi-skill. My definition of semi-skill does not say that they possess skill. I know the duties of Testers. Testers included in Testers duties are several regular series of tests on crude oil and its products. They find out certain scientific facts about these oils. The duties of Tindels of Lubricating blending consists of blending several lubricating oil fractions to give standard marketable blend. I am not in a position to answer the question as to how the duties of Class I and Class II Testers differs. There are Head Testers whose duties are of supervisory nature. Shift Testers are incharge of the Testers on shift.

"Skill can be acquired by experience and training, in specialized industries. Our workers acquire training in the course of their work. Process Mistries look after certain sections of process under supervision of Supervisors. There are only two processes where there are mistries in paraffin sheds and in wax sweating plant. There is one mistry for each shift and one headman. There is a supervisor for each shift. The supervisor gives standard instructions and continue to see that these instructions are carried out. Off hand I am not aware of any instances in which standard instructions to process mistries given by supervisors have not been carried during the supervisor's absence. There is no category of workers in my department whom I could classify as highly skilled. In the course of my experience I have found a limited number of workers who have been found to be highly skilled. I cannot give the approximate number of such highly skilled workers but I can mention two cases straightaway. This is in course of my experience in 25 years. My evidence is that these workers in general after attaining a certain degree of skill stop there and do not go further to the highly skilled class. They are not qualified to go further."

Shri Sen also referred to the deposition of WW-1 and maintained that the classification made by the Company in consultation with the heads of the departments in assessment of the jobs valuation has been made in a scientific and regular manner and in the absence of any material to justify the revision of classification the same may not be disturbed.

I need hardly say that I have spent some time in going through the charts of designations supplied by the Company and have examined the evidence of the Union's witnesses and that of the employer's witnesses and I have no hesitation in saying that the evidence cannot be treated as an expert evidence and conclusive for the purpose of classification. The question is indeed very ticklish and not so easy as it was sought to argue by the Union for the purpose of revision. The other difficulty is that even if some expert advice would have been taken that advice should have been of as many advisers as the departments there are for the simple reason that each department deals with certain technical job and either one who has actual experience and bears independent and unbiased mind over it or one who supervises the job as an officer-in-charge with some experience can be in a position to adjudge as to whether a worker now treated to be unskilled can be taken as skilled or vice versa. Shri Basu on behalf of the Union stressed the point of classification to such an extent that he wanted even a Jugali and a sweeper to be treated as a semi-skilled or a helper who helps in earth cutting or other manual labour and on certain occasions is of assistance to skilled workers while handling the machinery or sitting on the ladder in rig building or some such occupation to be treated as skilled one. I, moreover don't think it would be at all advisable for me to shake off the sworn testimony of the officers-in-charge who appeared on behalf of the Company or a large number of workers who appeared on behalf of the Union and hazard my opinion. It may be an admission of helplessness but when the data is not conclusive and is rather confused and the arguments are made in, a rig marole manner mixing up the question of classification with scales of pay, grades and promotion etc., it is better to plead helplessness than to make mistakes. The workers naturally aspire for higher

designation and are more likely to exaggerate wittingly or unwittingly. As compared with their evidence the statement of responsible officers again is naturally to be treated with more credence but it cannot be forgotten that they are in the service of the Company. A statement of oath against an oath would therefore land anyone in the quagmire of doubts, uncertainty and inconstancy. In these circumstances, I would only recommend that an Advisory Committee of Labour and the Company with equal representation be constituted within a month of the publication of the award for determining the classification of all jobs, who will submit their report to the General Manager of the Company for approval and adoptation.

Issue No. 26 deals with the classification of certain particular jobs and be considered to have been covered in the decision of the main issue No. (31) and needs no further consideration. The duties of the workers in the Rig Building and Drilling Departments can also be considered in particular by the Advisory Committee to be constituted for the purpose of classification. The latter part of issue No. (26) relates to the removal of grievances of Chart Calculators and midwives in this issue and appears to be misplaced. No arguments were advanced in this respect and as such it does not admit of any adjudication.

Issue No. (2): Increased Dearness Allowance according to the increased cost of living as well as family allowance for families more than three consumption unit.

The demand of the Union regarding Dearness Allowance as embodied in the statement of claim is not put in tangible form and is a long continued series of demands covering the question of increased Dearness Allowance according to the increased cost of living, Family Allowance, compensation for the discontinuance of the cheap ration shops, special allowance owing to the stoppage of family allowance, payment of Dearness Allowance in full to Youths for the failure of the last Tribunal to grant full Dearness Allowance to them, payment of arrears of Dearness Allowance to women employees for the reasons stated in the case of youths, payment of Dearness Allowance in full to workers working at least 24 days in a month and payment of Dearness Allowance on overtime work to all the workers. The subject matter given in the claim is more a thesis than a demand in its setting asking the Tribunal furthermore to determine this demand in the light of certain principles enunciated in a specific case of Bombay. It may be stated at the outset that the demand as adumbrated in the statement of claim embraces all sort of grievances at the cost of lucidity and as such it presents some difficulty to analyse the present demand detached from the alleged previous loss, the sufferings of the workers and for the payment of arrears on account of the prior award which is alleged to have fallen short of the aspirations of the Union. Shri S. K. Basu arguing on behalf of the Union however tried to explain the Union's position and analysed the demand as below:

That in the previous award the increase made was not only neutralized by the discontinuance of the food concessions but had actually put the workers to some loss and as such the suffering of the workers may also be taken into consideration in the determination of the increased Dearness Allowance coupled with the plea of the increased cost of living. It was submitted that in the previous award a worker drawing wages at the rate of Re. 1/6/- to Re. 1/14/- or Rs. 30 to Rs. 40 per mensem was allowed Rs. 38/3/- per month or Re. 1/7/6 per day as Dearness Allowance.

And a worker drawing Rs. 2 to Rs. 3 per day or Rs. 100 p.m. was awarded Re. 1/8/6 per day or Rs. 39/3/- per month.

And a worker drawing Rs. 4 to Rs. 4/14/- or Rs. 100 to Rs. 150 per mensem was given Dearness Allowance at the Rate of Re. 1/10/- per day or Rs. 42/4/- per month.

And a worker drawing above Rs. 100 per mensem was allowed Dearness Allowance of the amount of Rs. 45/8/-.

This increase, however, was made in liquidation of food concession and the workers suffered in the actual process. The present demand of the labour the Counsel proceeded is for not less than Rs. 70 at least. The argument advanced was two fold: In the first part he dealt with various authorities wherein the principle for the determination of Dearness Allowance was discussed and in the second part the learned Counsel referred me to the statement of several witnesses examined by the Union as well as the documentary evidence comprising of various charts and tables giving the cost of living index of different places and the report of the labour officers.

In regard to the first part of argument *i.e.*, the legal aspect of the question reliance was placed on Pay Commission Report page 13 (para. 18) which put briefly bespeaks that when the prices are stabilized, they will stabilize at a much higher level than the pre-war average; and on this basis recommendation was made as to the basic rates of salary. While choosing a figure as the index with reference to which basic wages are to be fixed it was observed that public servants will not be prejudiced if the selected figures turned out to be somewhat low because they will be compensated by the Dearness Allowance. But if the figure turns out to be too high the public exchequer will stand to loose as it will be unusual and impracticable to make deductions from the salary of public servants during the months or years when the cost of living may be lower than the assumed figure. Reference was also made to the observations made in the report at page 45 (para 71). In this paragraph it was observed (in the light of para 18 *supra*) that some system of Dearness Allowance must be continued so long as the cost of living continues to be substantially higher than that indicated by an index of 160 to 175 and that it was too late to discuss the theoretical argument for and against for this allowance. These principles are not disputed by the other side and I am conscious that the Dearness Allowance to which services have become accustomed cannot be discontinued unless and until economic conditions improved. In other words the wages are to be fixed on a certain cost of living index and if it goes down the Dearness Allowance can also vanish. Shri Basu also referred to some other paragraphs in between 76 and 93 pages of the report and discussed the middle class cost of living. But in view of the acccpted principle I don't see it is necessary to dilate upon all this theoretical discussion. The next reference was to be Fair Wage Committee Report and the observations made at page 24 of the report. The relevant portion is embodied in para. 42 and it reads as follows:

> "42. The method of compensating workers for increase in the cost of living by the grant of what is known as dearness or dear food allowance is peculiar to India. In foreign countries the usual practice is to adjust wages themselves in accordance with the changes in the cost of living. Until the cost of living comes down to the level of 160 to 175 as indicated above, it is clearly necessary for this country to continue to pay dearness allowance to neutralise, wholly or at least substantially, the increase in the cost of living. The necessity for the continuance of such an allowance has been admitted on all hands."

This also repeats the same principle and need not be elaborated. The question before me is more for determination of the quantum of relief to be granted and not that of principle of the continuance or discontinuance of dearness allowance. The wage earners are to be compensated by the dearness allowance when there has been a rise in the cost of living. Hence the point is as to whether there has been rise in the cost of living and if so what increase in the amount of dearness allowance can be made. The learned Counsel for the Union then referred to Posts and Telegraph adjudication report by Mr. Justice Rajadhyaksha and Burmah Shell case (Reported in Labour Law Journal—June 1951). It was argued that applying the principles laid down in these cases the present amount of dearness allowance given by the Company to its workers is inadequate.

Coming to the evidence reference was made to WW-1 Mohd. Ishaque, WW-2 Habibur Rahaman, WW-7 T. N. Nair and WW-9 Jibon Krishna Sarkar and on the strength of their depositions it was contended that the cost of living has gone up and the present scales are very low. I have already discussed the evidence of some of these witnesses while discussing scales of pay in Issue No. (1) and the same may be referred to. The documentary evidence giving the index of cost of living of adjoining places and the comparison of food prices in Digboi embodied in Ex/XX—series and in Ex.ZZ/1 and Ex.ZZ as well as statement of different prices of foodstuffs from 1949 to 1951 and the comparison of prices of food of Bombay and Digboi embodied in charts YY-5 and YY-12 of course would form a better and useful data in the consideration of the point at issue. Of this documentary evidence Ex./XX-11 is a report by Shri Deshpande showing the average monthly expenditure and percentage to total monthly expenditure per family consisting of 4·11% and the cost of living estimates for a family of an average of six. It gives cost of living index number for Tinsukia to be 186. Ex XX-12 deals with the value of food subsidy before and after the award. Ex. XX-14 is another chart filed by the Union in support of this issue showing the continuous worsening conditions of life. Exs. XX, XX-15, XX-16, XX-17 and XX-18 are charts showing percentage rise in the cost of living and proceeds of sale of Rice Stores etc. which to my mind are not very helpful because they relate more to the alleged losses on account of dearness allowance in cash in terms of

the prior award. There are more Exhibits XX-19, XX-20, XX-21, XX-22, XX-23, XX-24, XX-25 and XX-26 which relate to the proceedings of the Works Committee meetings in which the question of increase in dearness allowance was discussed and the resolution passed in that connection. Ex. XX-27, and XX-28, are charts showing value of food subsidy for the years 1947 and 1948. Ex. XX-29 is a chart showing proceeds of sale of ex Rice Stores and the incidence per employee per month. This shows that if an employee in 1946 was spending 20·48 rupees per month; in 1950 the incident per employee was 38·66 rupees. Various other charts under YY series were also filed showing the cost of food subsidy and ration scale and value of food articles. Some of these have been particularly dealt with but I have no hesitation in remarking that this mass of tables brought on the record in a promiscuous manner without any arrangement has considerably confused the evidence instead of elucidating the matter. Some of the relevant charts which have direct bearing on the question of dearness allowance are picked up and will be dealt with on their face value. Of these Ex. ZZ is a chart giving the prices of food articles as obtained from Digboi markets for the years 1948, 1949, 1950 and 1951. The examination of this chart shows that there has been continuous rise from one year to other in price per seer in the price of essential food articles and spices. But the data is based on market rates and cannot be treated as an authentic one and need hardly form the basis of the cost of living at Digboi. The other document Ex. ZZ/1 gives a comparison of food prices in Digboi during the period from 1939 to 1951. The rates given in this chart relate to market rate as well as Rice Stores rate. The examination of this chart shows that there is considerable disparity between the rates of Assam Oil Company Rice Stores and the market rates. Without dealing with each commodity suffice it to say that the workers supply so far essential commodities are concerned mainly comes from Assam Oil Company Rice Stores and as such this data also is not very helpful although it does indicate that in the market the essential commodities were sold at a very high price. Mustard oil and vegetable cooking fat however stand on a different footing so far Company Rice Stores rate and market rates are concerned. Ex. YY-5 is another statement showing different prices of food stuffs from April 1949 to September 1951 at Assam Oil Company Rice Stores. This has already been discussed in Issue No.(1) with the remark that there has been a rise in the average price in 1951 as compared with 1949. Ex. YY-12 is a table in which comparison of retail prices of food articles between Bombay and Digboi has been made. The examination of this table shows that the percentage of prices at Digboi in the year 1951 was higher than that of Bombay except in the case of tea. Shri Basu in the course of arguments produced another chart for the assistance of the Tribunal wherein cost of living at Digboi based on Ex.YY-13 for three adult units has been given. This cost of living is in respect of 19 food articles in the year 1939. I need hardly say that I am more concerned with the present position and the state of affairs in 1939 can only show the disparity. In this connection another chart giving the cost of living for the year 1948 and 1951 was produced and it was argued that the total cost of living for 3 units was Rs. 27/4/8 in the year 1939 which went up to Rs. 87/3/- in the year 1948 and Rs. 154/3/5 in the year 1951. It was maintained that by calculation the rise in the cost of living in the year 1951 was 442% over 1939. Reference was also made to an extract from the Assam gezette (Ex.YY-13) which deals with the cost of living in Tinsukia. According to this Exhibit the cost of living index numbers of the general working class people for Gauhati, Silchar and Tinsukia compiled by the Labour Bureau, Government of India, and the living index number at Tinsukhia was 186 in June 1951. Tinsukhia is situated about 20 miles from Digboi where the Kerosene Tinning factory of the Company is situated. Shri Basu however challenged these living index numbers on the plea that in the first place it was provisional as mentioned therein and secondly Tinsukia is on the main line in Assam Railway and the prices of essential commodities at Tinsukia are cheaper than Digboi. It was further argued that the cost of living index for Digboi is not prepared by the Government and furthermore the Assam Government Index (Ex.YY-13) deals with food commodities only and not other articles which constitute the necessaries of life *viz.*, clothing, tollet etc. The next point urged by the learned Counsel of the Union was that this question can also be considered from another aspect as borne out from Ex. XX-17 and 21-X/5. Ex. XX/17 is a chart which gives an estimate what an employee paid for his own ration before and after the last award on the Company's ration scale in the years 1948, 1949 and 1951. It was submitted that if a worker was paying in 1948 Rs. 8/2/- for his ration to the Company's shop he had to pay Rs. 26/9/9 in September 1951 to the same shop. It was urged on the basis of these figures that there has been a rise of 327% in the year 1951. This feature of evidence does indicate rise but in the absence of any evidence that the number of dependents of the workers in the years 1948 and 1951 was the same, it is not safe to treat it as conclusive evidence. Shri Basu next referred

to various other charts and documentary evidence giving the incidence of losses borne out by the workers on account of the liquidation of food concession and the non-implementation of the award. Reliance was placed on Ex. YY-3—calculation of losses, Ex. XX/14 showing condition of employees who suffered losses, Ex. XX/18 showing the loss on sales, and some fresh charts produced in the course of arguments showing losses suffered by families after the award as compared with their position before the award based on Ex.YY/3. These charts and documents relate to the losses and have no bearing on the issue in hand and can be considered if necessary while dealing with Issue No.(30) regarding the non-implementation of the previous award. Reference was also made to the accounts of the Rice Stores and the details of expenditure and it was sought to argue that the workers suffered immensely and the losses amounted to several lacs on account of the prior award.

The Union Counsel next argued for the payment of full dearness allowance to Youths and the women and claimed dearness allowance for over time work also. In this connection reference was made to Labour Commissioner's report (Ex.VV) wherein the said officer made a recommendation for the payment of overtime at double wages including dearness allowance. Lastly it was submitted that the demand of the Union in nutshell is for Rs. 70/- or atleast Rs. 60/- as minimum amount of dearness allowance for those drawing Rs. 100/- with an increase of 90 per cent. of slab of basic pay of Rs. 100-150, 45½ per cent. slab for those drawing Rs. 150-200 and 22½ per cent. of basic pay over Rs. 200/-.

Shri S. C. Sen arguing on behalf of the Company on the other hand submitted that the present scale of dearness allowance is in accordance with the award of 1949 and over and above that a voluntary addition has also been made in view of the rise in the cost of living and as such any further increase was uncalled for. It was argued that Mr. Justice S. P. Varma awarded Rs. 1-7-6 per day or Rs. 38/3/- and the Company has raised it to a minimum of Rs. 45/8/- and it was unreasonable on the part of the labour to make any further demand. Regarding the liquidation of food concession Shri Sen contended that dearness allowance was converted to cash benefit on the asking of the labour itself and their complaint was misplaced. With regard to the non-implementation of the award the Counsel for the Company refuted rather in strong terms the allegation of the Union that the prior award was not implemented and furthermore maintained that this Tribunal is not competent to sit over the previous award for the purpose of implementation. It was for the appropriate Government to see that any term was not implemented and in this respect the whole argument was misleading and irrelevant. Regarding the case of youths and women it was submitted that the dearness allowance has been released on the recommendation of the Labour Commissioner and so far the previous suffering or losses are concerned it was wrong to say that the award was not implemented and secondly it was not within the competence of the Tribunal to consider that aspect. Coming to the question of rise in the cost of living to justify increase it was argued that no specific index for Digboi was prepared as it cannot be done for all places but the cost of living index for Tinsukia and Mergherita are available and both these places are situated within 20 miles from Digboi. Replying to the legal aspect and the argument of the other side as to what are the guiding principles in the matter of dearness allowance, Shri Sen submitted that these principles are well known and it is an admitted fact that the rise cannot be neutralised cent per cent. Reference was made to Burmingham and Carnatic Mills case (Labour Law Journal—September 1951—page 334) and it was argued that according to the principles laid down by Labour Appellate Tribunal an increase of As. -/3/- per point was allowed in that case and on the basis of this criteria the Company was paying more than the Company should have paid. The learned Counsel further replied to the arguments of Union side with regard to the ration shop and its maintenance, and contended that ration shop was maintained on no profit basis.

Another important factor which is to be considered is as to what should be the increase per point if there has been a rise in the cost of living. In some Bombay cases As. -/8/- per point rise was considered as a guide. But in Buckingham & Carnatic Mills case the Labour Appellate Tribunal, holding that cent percent neutralization of the rise in the cost of living cannot be permitted, held that As. -/3/- per point was fair. Their lordships refused to accept the pattern of Ahmedabad awards and also distinguished the view taken in Bombay awards. At the time of report in Buckingham Carnatic case the cost of living index was 260. On this figure dearness allowance of Rs. 25/- was worked out at the rate of As. -/2/6- per point rise of the index. The Tribunal discussing other factors and

capacity to pay of the Company ultimately refused to make any increase and retained the existing rate at As./3/- per point rise in the cost of living index figure. The argument advanced by the Union in this respect was that the formula adopted in Buckingham and Carnatic Mills case was not applicable here because the cost of living in Madras is cheap and reliance was placed on a formula adopted in a Bombay case (Reported in Industrial Court Reporter—November 1950) and Burmah Shell case where As.-/5/6 per point was allowed.

Regarding the actual figure in the matter of cost of living index number, it was stated on behalf of labour that in 1948 the cost of living index was 319 which has risen in 1951 (of course in the light of the evidence adduced by Labour Union) to 542 and taking the base of 100 in 1939 there is a rise of 442. Shri S. K. Basu working on Bombay formula submitted that in consonance with this the amount of dearness allowance would be three times more. In other words the demand comes to Rs. 1/7/6 x 3 equal to Rs. 4-6-6 per day for daily rated and 90 per cent. and 45½ per cent etc. in addition to Rs. 70/- in the case of monthly rated workers as detailed *supra* in discussion. Obviously the demand is beyond all proportion and cannot be accepted. On the contrary, on the data relied upon by the Company *viz.*, cost of living index number of Tinsukia is 186 and of Mergherita is nearly 200. The figures also cannot be readily accepted, in the light of the evidence brought on the record. The question of dearness allowance was recently discussed by the Labour Appellate Tribunal in the case of Automobile Manufacturing Employees Association case (published in Labour Appeal cases February 1952). But in this case their Lordships based their decision on an agreed formula and held that dearness allowance based on the agreed cost of living index should not be disturbed unless the index has changed. The cost of living index number of Bombay in 1948, when the agreement was made, was 323 and it is said to be more or less the same in 1952. Shri S. K. Basu in the light of this decision brought down the minimum demand of Rs. 70/- to Rs. 60/- which was awarded in the Automobile Company case. But this authority is not in point inasmuch as the dearness allowance was fixed on the basis of a certain agreement and not computed on the basis of any formula against any rise in the cost of living index.

Now in this case the Company has made a voluntary increase in the amount of dearness allowance in consideration of the rise in the cost of living from Rs. 38-3-0 to Rs. 45-8-0 as evidenced from Ex 4, dated 3rd August 1951, Ex 3, dated 13th September 1951, Ex. 5 dated 4th August 1951 and Ex. 6 dated 4th August 1951 pertaining to youths which are again incorporated in Ex 21/X-4.

This is reproduced as under:

*Ex.*21/X-4:

"*General Notification No.* 6

DEARNESS ALLOWANCE:

In view of the recent rise in the cost of living, as from 1.8.51 Dearness Allowance to the undernoted employees will be increased as follows:

All employees in receipt of

(I) Rs. 1-2-6 to 1-14-0 per day will get Rs. 1/12/- per day or Rs. 45-8-0 per month.

(II) Rs. 2-0-0 to 3-12-0 per day or Rs. 50 to 100 per month will get 1/13/- per day or Rs. 47-2-0 per month.

(III) Rs. 4-0-0 to 4-14-0 per day or above Rs. 100/- and up to Rs. 150/- per month will get Rs. 1/14/- per day or Rs. 48/12/- per month.

(IV) Above Rs. 150/- per month will get Rs. 52/-.

(Sd.) S. T. Glover.
for Actg. *General Manager.*

General Notification No. 7

DEARNESS ALLOWANCE CORRECTION

In Section II of General Notification No. 6 of 3.8.51, the basic rates of pay mentioned should read:

Rs. 2/- to Rs. 3/14/- per day—and not Rs. 2/- to Rs. 3/12/-

(Sd.) S. T. Glover.
for Actg. *General Manager.*

D/C.I.C.18/13-G

4-8-51

Accountant,

Further to our General Notification No. 6 of 3-8-51 please note that:

I. Youths' Dearness Allowance will be as follows :

(a) Youths on the Youths' Pay Scale whose fathers are employed by the Coy. will receive -/10/- per day or Rs. 16/4/- per month.

(b) Others on the Youths' pay scale will receive Rs. 1/4/- per day or Rs. 32/8/- per month.

II. Employees in receipt of a basic wage in excess of Rs. 200/- per month will get a Dearness Allowance of Rs. 52/- or 25 per cent. of basic wage, whichever is greater.

(Sd.) S. T. Glover,

for Actg. General Manager.

Copy to: L.S/Secy., A.O.C.L.U

General Notification No. 9.

DEARNESS ALLOWANCE

We refer to General Notifications Nos. 6 and 7 dated 3rd and 4th August, 1951 respectively. It has now been decided to make the increased Dearness Allowance retrospective from 1st July 1951.

However, in view of the considerable work involved in arranging for the payment of September's wages and Bonus before the Pujah Holidays, it may not be possible to pay this retrospective Dearness Allowance until the October wages are paid.

(Sd.) S. T. Glover,

for Actg. General Manager.
A.O.C. Limited."

This voluntary increase made by the Company on the plea that there has been rise in the cost of living clinches the point so far the rise in the cost of living in the year 1952 goes as compared with 1949 when the last award was given. Put in other words, when the Company admits that there has been rise and on that basis they had made the voluntary increase I think a great mass of evidence could have been dispensed with. But the anxiety on the part of the Union appears to have been that the rise was abnormal and moreover the labour had suffered losses on account of the liquidation of the food concession by the prior award. At any rate the question for determination now is only with regard to the quantum. This again is not easy notwithstanding of the avalanche of tables and charts, returns and statements prepared from various standpoint so long a clear cut index of Digboi is not made available. The one available *viz.*, of Tinsukia is not acceptable to the Union, although Tinsukia is situated at about 20 miles from Digboi which aspect has been discussed above and needs no further elaboration. One thing however that strikes prominently is that with a voluntary increase in the amount of dearness allowance the Company has also admitted higher index as compared with one which was adopted by Mr. Justice Varma in 1949. Taking the actual figures the index number upon which the amount of dearness allowance was based in the first award was 300, and the minimum amount awarded was Rs. 38/3/-. If this amount be put to arithmetical calculation it would bring the cost of living index number to about 360

$$\left(38\tfrac{1}{6}—45\tfrac{1}{2} — 300\right)$$

$$\frac{45\tfrac{1}{2} \times 300}{38\tfrac{1}{5}} = 360$$

Now for want of proper material with regard to the cost of living index number of Digboi in view of the accepted principle that cent per cent rise in cost of living cannot be neutralised in fixing dearness allowance even if 360 index number be taken as granted the increase on 260 after deducting 100 base at the rate of -/3/- per point as upheld by Labour Appellate Tribunal in Buckingham & Carnatic Mills case would work up to Rs. 49 and some annas. In these circumstances it is abundantly clear that the increase made by the Company of

their own accord falls short of the actual increase based on admitted facts. On the consideration of all these facts and keeping in view the basic principles enunciated above *viz.*, capacity to pay, future risks involved and the facts and figures of other places, I am of the opinion that the following scales would meet the requirements of the scale:

(1) The Dearness Allowance of the daily rated workers should be increased to a minimum of Rs. 50 or daily wages equivalent to this amount, of course, working for 26 days already in practice.

As regards the clerical Staff including monthly rated staff of all departments working on monthly basis—

(2) For the first 100	...	... Rs. 50
(3) Thereafter in slab between Rs. 101—150		... 90% of basic salary.
(4) Thereafter in slab between Rs. 151—200		... 45% of basic salary.
(5) Thereafter in slab over Rs. 200	...	... 22½% of basic salary.

Illustration.—For an employee say drawing Rs. 175 basic salary or wages per month the Dearness Allowance will be calculated as follows:—

For the first Rs. 100	...	... Rs. 50
For the next Rs. 50 (90% of Rs. 50)	...	... Rs. 45
For the next Rs. 25 (45% of Rs 25)	...	...Rs. 11/4/-
Total Dearness Allowance...		Rs. 106/4/-

There are certain subsidiary points which were also urged on behalf of the Union in connection with the demand of increased dearness allowance. Of these the demand for special family allowance finds its place in the heading of the demand but no details were given nor any reasons were assigned for this allowance. I see no force in the demand which was not seriously pressed. Regarding overtime the contention of the Union is that dearness allowance is an integral part of wages and under the Payment of Wages Act, in principle when overtime wages are paid dearness allowance on overtime wages should also be paid. Reference was made to the recommendation of the Chief Labour Commissioner in this respect and it was claimed that overtime allowance should be paid at the rate of double the wages including dearness allowance.

The payment of Dearness Allowance was introduced primarily to meet the high cost of living which has been going up since the last war with the result that dearness allowance is being paid over and above the salary in all Government offices as well as commercial and industrial concerns. Now overtime obviously adds into the number of working hours and as such necessarily brings more wages to the worker; but in principle by no stretch of reasoning it adds to the cost of living. It is understandable that when a worker works beyond the prescribed limit of working hours he is put to more sweat and as such should get wages at a higher rate and in some cases overtime wages are paid double the usual wage but I have not been able to persuade myself to agree in principle that overtime has any relation with the rise in the cost of living which forms the corner stone of the whole theory of dearness allowance. I am therefore of the opinion that the demand is beyond the mark and cannot be allowed.

Regarding payment of dearness allowance to youths and women in full it was submitted on behalf of the Company that the same has been released. In view of the finding given in the case of youths to be treated as adults for the purpose of pay scales both women and youths will get the benefit of full dearness allowance, and the demand so far future payment is concerned becomes infructuous.

With regard to previous loss I am afraid I cannot go into that for the simple reason that it was done in terms of the previous award. Regarding the maintenance of shops the contention of the Union was that the Company put wrong construction on the word 'maintenance' and thereby failed to implement the terms of the previous award in this respect. The argument exactly was that Mr. Justice Varma in his award of 1949 observed that the Company should maintain the foodstuff shop and continue to run the same on the basis of 'no profit no loss principle'; and that the cost of maintaining the shop should be borne by the Company.

The trouble arose on the wording 'maintaining the shop'. The contention of the Union is that it was for the Company to incur all the expenses of running the foodstuff shop *viz.*, payment of wages to the clerks, and other expenses of importing foodstuffs for running the shop but the Company construed that they had only to provide accommodation for foodstuff shop with the result that the workers had suffered considerable loss in the purchase of rations which were sold at higher price due to the addition of extra expenditure incurred in the running of shop. It was next argued that the matter was referred to the Chief Labour Commissioner and Conciliation Officer and both gave their finding in favour of the Union and observed that the Company has put a too narrow interpretation on the previous award and the entire cost of establishment including accommodation should have been borne by the Company. The word 'maintenance' has its plain dictionary meaning but I cannot enter into the matter at present because this demand relates to the alleged non-implementation of the terms of the previous award which forms a separate issue No. (30), and will be dealt with at the time of coming to Issue No. (30).

Issue No. (3): Bonus for the year 1948-49 and onwards according to the financial position of the Company at the rate of three months' wages inclusive of Dearness Allowance for every year.

The demand has been detailed at page 44 of the statement of claim, and briefly summarised bespeaks that the Union has been asking since 1946 for bonus according to the financial position of the Company at the rate of three months pay inclusive of dearness allowance for each year; but the Company has turned deaf ear although their financial position as shown by their reserve funds, assets, huge profits and payment of high devidends is very sound. It was alleged *inter alia* that soon after the prior award of February 1949 the Union wanted to discuss the question of payment for the year 1948 but the Company refused point-blank to enter into any discussion. It was claimed that payment of bonus has now been recognised by all hands and according to the terms of the prior award also bonus is a matter of right to which workers are entitled. It was submitted that the Company should pay bonus for the year 1948, 1949 and 1950 and continue to pay the same hereafter on the basis of the following principles:

(a) If the Company's dividend is over 3 per cent. for every increase of ¼ per cent. in the dividend over 3 per cent. a bonus equal to 1/6th of month's pay is to be paid.

(b) In case the Company declare a dividend of 3 per cent. or less in future, the Company's actual position should be reviewed by a Tribunal on the basis of their real financial conditions and an award may be given according to the materials placed before it. The Tribunal should be free to grant a bonus if it finds that the Company's financial position as a whole justifies it in spite of the declaration of a lower dividend than 3 per cent.

In the next paragraph it was stated as to who would be entitled to bonus and to what extent and the statement closes with the following penultimate paragraph:

"(ix) The Union's demand for three months' pay as bonus, which was obviously based on the known or anticipated profits and dividends, need not prevent the Tribunal from giving an Award accepting the proposed formula which may well result in larger or smaller payments according to the declared dividends.

The Union, therefore, leaves the fixation of any total amount entirely to the judgment of the Tribunal which would, no doubt, take into account also the facts that the Company had accumulated a very large reserve fund built up by the total endeavours of all concerned and particularly by depriving the workers of any share of it during a long period and that consequently, the workers have the right to a share of the past profits over and above what may be due under the proposed formula."

A glance on the extracts quoted above from the statement would show that the Union's demand of the payment of bonus is co-related with the percentage of dividend paid to the shareholders and the demand is not definite as to ask for one or four months wages as bonus, and claim is based primarily on the sound financial position of the Company and the enormous profits alleged to have been made by it.

The stand taken up by the Company in the written statement is contained in a short note and it will be better to reproduce the same:

> "*Bonus for 1948 and 1949 and onwards.*—The Company opposes the demand made under this issue and contends that the Union has misconstrued the last Award. The Tribunal awarded a bonus for 1947 of one month or 26 days basic wage and for 1948 and 1949 the Company has made similar payments to its workmen on the same lines as that awarded for 1947. The Union has not stated any reason why departure should be made from the Tribunal's directions made in the last Award.
>
> The Company further states that its employees are well paid and they also get one month's pay a year as the Company's contribution towards the Provident Fund and other amenities of substantial character. The Union's demands therefore are unjustified and not sustainable on merits and should be refused. In this connection the Company draws the attention of the Tribunal to the Chief Labour Commissioner's report dated 12th, April 1950, the relevant extract of which is stated below, and which will show that the Company's decision in regard to bonus was just.
>
> 'The employees have already accepted the bonus which the Company paid for the year 1948. At the time of accepting the bonus which was at the rate of one month's pay for each worker, they did not raise any objection. This was also the rate of bonus allowed in the award for the year 1947. Now after having accepted the bonus and the Company having made up their accounts on that basis, it is hard on the Company if they are asked to consider this question again. In my opinion, no valid ground has been made for reopening the question of bonus for the year 1948.'
>
> The Company submits that the demand is unjustified and the various proposals made by the Union in this behalf are also not subtainable and should be refused."

Now, in the course of arguments Shri S. K. Basu arguing on behalf of the Union carried me through various decisions of the Industrial Tribunals and Labour Appellate Tribunal in which the principles, on which bonus should be awarded have been laid down. On merits great stress was laid upon the financial position of the Company and repeated references were made to the accumulated fortune, high prosperity and enormous past profits made out of the oil industry. It was also urged that this Company is a subsidiary branch of the Burmah Oil Company and the dividend goes to the Burmah Oil Company who are the shareholders, and it was bemoaned that the whole profit is going to the share-holders like a shop-keeper without caring for the distress of the workers with whose cooperation and sweated labour the Company has grown so prosperous. Now reguiding principles, the well known decision of the full bench of Labour Appellate Tribunal in the case of Millowners Association, Bombay and Rastriya Mill Mazdoor Sangh, Bombay is the basic authority. In this case the Tribunal repelled the contention that bonus is *ex-gratia* payment when wages have been standardised more especially when the wages have not reached the living wage standard. In enunciating the principles for the grant of bonus the Tribunal held that the first charges on gross profit are (1) to provide for depreciation, (2) reserves for rehabilitation, (3) to return at 6 per cent. on the paid up capital, (4) a return on the working capital at a lesser rate than the return on the paid up capital. And thereafter the profit that remained was available for bonus. Several other matters were aslo discussed at length which need not be gone into. Some other authorities about a dozen in number were also cited at the bar on behalf of the Union in enunciating the principles laid down for the determination of bonus. These are catalogued as below but I have no mind to discuss each one of them for the simple reason that it has been well established by this time that bonus is not an *ex-gratia* payment and is a share for the participation of labour in the profits of the industrial or commercial concerns more especially where the living wage standard has not been reached.

(1) Labour Law Journal—September 1951—page 314 Buckingham & Carnatic Mills Ltd.

(2) Labour Law Journal—August 1951—page 153 Dalmia Cement Co. Ltd.

(3) Labour Law Journal—September 1951—page 387 Associated Cement Co. Ltd.

(4) Labour Law Journal—February 1951—page 169, International Motor Company Ltd., Bombay.

(5) Labour Law Journal—July 1951—page 113, British Insulated Callendar Cables Ltd.

(6) Labour Law Journal—September 1950—page 1000, East India Distilleries Ltd.

(7) Labour Law Journal—October 1951—page 495, General Motors Ltd.

(8) Labour Law Journal—April 1951—page 379, Pipe Mill Mazdoor Union, Lucknow and Indian Hume Pipe Co. Ltd.

(9) All India Industrial Tribunal (Bank Disputes) Award—page 269.

(10) Indian Labour Year Book—for the year 1948-49—page 292.

(11) Industrial Court Reporter—November 1950—page 309, Burmah Shell case.

On facts, the Balance Sheets for the year 1949 and 1950 (Exhibits ZZ/11 & ZZ/12) were produced. Now the general argument of the Union Counsel was that the total earnings of the employees fall much short of the requirements and Labour has a right to share in the prosperity of the Company but the Company is sitting tight over huge profits and were paying good dividends to the shareholders at the cost of the labour. It was contended in view of the full bench decision of the Labour Appellate Tribunal referred to above that at least 2/3rd of the profits should be made available for distribution of bonus and 1/3rd be utilised for dividends. On the basis of this assertion Shri Basu maintained that the labour was entitled to nine months wages by way of bonus, and the Company whose work of oil production has stabilised can well afford to pay any amount. Reference was made to the Chairman's speech (Ex. ZZ/10) which has already been quoted while dealing with the case of dearness allowance.

It may also be pointed out that the demand of the Union before Mr. Justice Varma as laid down in the statement of claim was for payment of bonus at the rate of one month's wages for the years 1944, 1945, 1946 and 1947. The Tribunal rejected the claim for 1944, 1945 and 1946 on the ground that past bonus could not be granted and allowed bonus at the rate of one month's basic wage. This time as stated above the demand was not specific regarding the number of months but in the course of argument Shri Basu made a specific demand for four months basic wage including dearness allowance with reference to certain decisions whereby four months wages were allowed for the purpose of bonus.

On the other hand Shri S. C. Sen, learned Counsel for the Company, while controverting the arguments of the other side urged, in the first instance, that so far bonus for the year 1948 was concerned, the same was paid in terms of the last award and no objection was taken. Reference was made in this connection to a similar case published in Labour Law Journal—February 1952—page 199—Kashi Iron Foundry and others wherein the Tribunal rejected the claim for bonus for the past years on the ground that settled accounts could not be re-opened and no valid reasons had been adduced by the Union for doing so. Regarding the year 1949 Shri Sen submitted that the demand was made on 28th September 1950 as borne out from Ex. WW/1 and bonus at the rate of one month's wages was offered to their employees but the Union objected and claimed for three months wages on the plea that each year bonus depends on financial position and was not tied with the previous year. And that bonus for the year 1949 has since been paid at the rate of one month's wages. Shri Sen proceeded to argue that the share in profits again would depend upon production and if there was no higher production there was no justification for higher amount of bonus. While referring to the speech of the Chairman, Burmah Oil Company the learned Counsel for the Company contended that the word used in the speech was 'stabilised' and not 'increased'. The argument precisely was that when the Chairman of the Company stated that the production was stabilised he did not convey that the production was on increase and it would only mean that the production had become static and as such it could not be said that every time production was more to attract more amount of bonus. It was next argued that in the oil industry, oil field is not a perennial spring and there are all kinds of risks and in the production of oil and with this uncertainty of quantity of oil to be welled out it was wrong in principle to claim bonus on the basis of profits or general prosperity of the Company. The Council rather garrulously contended that if there were high profits, these were the results of the investments made in the first instance and more investment for future; and the profits could not be wasted on labour to satisfy the unreasonable demand of the Union. Reference was made to an article published in 'Petroleum Press

Service' in the issue of March 1952 under the caption 'High Profit Needed', the relevant extract of which from page 82 of the journal is reproduced for facility of reference:

"Since the end of the war, earnings have been high and the industry's traditional high state of liquidity has so far been maintained. It was generally believed that the post-war expansion boom, would die down—as indeed it appeared to have done by the end of 1949—and slower and steadier advances would occur in the future. But the deep and widespread effects of the outbreak of war in Korea profoundly changed the outlook. Apart from giving rise to new and heavy demand for petroleum products, they brought a wave of inflation which is now rolling all over the world, setting new high cost levels, and greatly diminishing the purchasing capacity of accumulated funds. The oil industry is peculiarly vulnerable to all these changes, but doubly so by virtue of the fact that at the present time the basic valuation of its own products is tied down by the price stabilization measures in the U.S.A. Thus, while current and prospective costs, both operational and capital, go up and up, net sales proceeds per unit remain virtually stationary. Higher turnovers, also in the case of overseas trade higher tanker freights, have masked the net effects of these opposing factors. Though earnings are in many instances at nominally record levels, these earnings have not risen commensurately with the rises in replacement costs either of products or plant.

* * *

The distinctive nature of the oil industry makes it even more subject than many other industries to the baneful influences of inflation. Most companies are selling oil today which was discovered and developed many years ago. If they are to stay in business and hold their market positions they must discover over a period more new oil than they take out of the ground. But financial provision made down the years to this end will not now cover these costs; and today's crude oil and products prices do not reflect the new level of discovery and development costs. (In this respect, however, U.S. tax laws are far more advantageous for oil companies than are U.K. tax laws.) This disparity between original and current costs also applies, of course, to the replacement of worn out or obsolete plant and equipment. Accumulated depreciation and amortization funds, created under conventional accounting practices, are no longer adequate for fulfilling their purpose. The position is aggravated by the fact that, despite this, traditional methods of tax assessments continue, with the result that all income and profits taxes paid today include, in effect, an element of unintended tax upon capital.

It is unfortunate that the term "profits" still connotes for many, greed and acquisitiveness, also that the key importance to modern society of capital formation is far from being popularly appreciated. The analysis by Coquoron and Pogue, already referred to, shows that of the aggregate earnings, after taxation, for six years 1945 to 1950, only one-fifth was paid out to shareholders; the remainder was devoted to capital renewals and expansion. This is almost exactly the same distribution of earnings as during the 17-year period 1934—1950. These are the figures for the two main sterling groups, Anglo-Iranian and Shell, are only available for 1949 and 1950, but show that for this two-year period shareholders received a roughly similar proportion of the aggregate earnings after taxation, the remainder being retained in the business; profits taxation absorbed more than three times as much as the gross dividends.

The oil companies must continue to earn high profits if, under the new inflationary conditions, they are to accumulate funds on the scale needed for expanding their facilities in line with expected demand. For sterling companies trading overseas, capital expenditure of as much as £ 40 per ton of finished product may now be necessary to cover the whole range of operations from exploration to delivery of the product into the consumer's hands In the past two years world oil consumption has risen by something like 50 million and 70 million tons respectively. Today, the industry is fully stretched, new plant is only taking care of current needs, and there is little or no reserve

capacity anywhere. Even if demand this year rises by no more than 40 million tons (of which 20 million tons outside the U.S.A. and U.S.S.R.) a vast capital expenditure must be, and is in fact being incurred. Only profits can provide the bulk of the funds needed. The scale of a large oil company's operations is such that recourse to the capital market or to borrowing, even if relatively substantial in terms of money, can still only be a proportion of its capital needs; it cannot make good any serious or persistent shortfall in profits. Today high profits are the veritable life-blood of the industry. Without them, the consumer's insistent, and higher and higher, demands cannot be met."

Dilating upon the Balance Sheets, Shri Sen submitted on behalf of the Company that fifty lacs of rupees are shown as reserve for future work and Refinery itself would cost thirty lacs. The working capital as borne out from Ex.ZZ/12 is Rs. 440,000. Finally it was submitted by the Counsel that the Assam Oil Company was started in 1899 and after huge investment they could not make much headway when it was purchased by Burmah Oil Company in 1921. The company still could not make dividend till 1935 *i.e.*, for about two decades. That the dividend which was now paid in the year 1950 on the basis of 1949 business was 12½ per cent. but it should not be considered on its face value because the shareholders had been deprived for a pretty long time from the fruits of their investments. It was also urged that bonus is a remuneration for co-operation and as the labour was not responsive the Company must conserve their funds for its existence; and that various benefits are afforded by the Company by way of medical aid, leave concession, provident fund contribution etc., and these factors should also be considered in the determination of bonus.

Put in nutshell the main plea of the Union is that the Company has made enormous profits and the labour has not been given due share in the prosperity of the business built with the sweated efforts of Labour. On the other hand, the Company's case in brief is that accumulated profits are absorbed in new operations and high profits are the life blood of the industry upon which it can be sustained and without these profits, the work cannot go on.

Now so far the guiding principles for the determination of bonus are concerned, the basis on which bonus is to be awarded is no longer in doubt as the theory of *ex gratia* payment has since been exploded and bonus has actually acquired the connotation of a payment which the workmen may justifiably claim at the end of their year's labour. The other considerations in this respect would be as to whether there is a gap between the actual wages they are paid and the living wage in order to stem the tide of their distress and augment their finance to lead a healthy useful life by grant of bonus. These principles have been considered and reconsidered in a series of decisions and the Full Bench decision of Labour Appellate Tribunal of 1950 and one given by Shri K. C. Sen in the case of 'Standard Vacuum Oil Company and their workmen'—published in Labour Law Journal—Vacuum March 1952, can be read profitably in this connection and I need hardly discuss the point any more. On facts, now first thing is to see as to what is the available surplus profit for the years 1949 and 1950. The study of Profit and Loss Account given in Balance Sheet (Ex. ZZ/11) for the year 1949 shows that the balance of Trading Profit after charging administration expenses was £ 2,780,523-1-0d as compared with £ 2,677,177-14-6d in the year 1948. This obviously may be termed as gross profit. While net profit after deducting depreciation charges, Directors fee, Auditors fees, taxation on profits, United Kingdom Income Tax, Overseas Taxation etc. was shown £ 1,145,693-13-11d for the year 1949 as against £ 1,005,976-3-2d for 1948. Another item below "the balance carried down item" *viz.*, 'net balance of profit recommended for dividend—net' is the same *i.e.*, £ 1,145,693-13-11d. Now these figures quoted above are under the heading 'Profit and Loss Account for the year ended 31st December 1949' corresponding 1948 figures in italics.

The second and lower part of this Exhibit (ZZ-11) opens with the heading 'Balance Sheet as at 31st December 1949'. This deals with capital and reserves as well as revenue reserves, etc., and the figure given under 'ordinary shars of £ 1 each fully paid' is £ 450,000-0-0d as against £ 310,000-0-0d for 1948. This clearly indicates that the paid up capital, *viz.*, £ 450,000-0-0d was the layout upon which the above-mentioned profit was earned. This would be further elucidated by the

report of the Directors which is attached with the Balance Sheet of 1949 (Ex. ZZ/11) and is reproduced as follows:

"*Ex.* ZZ/11 (*page* 2)

1949

ASSAM OIL COMPANY LTD.

Report of the Directors to be presented to the shareholders at the fifty-second Annual General Meeting of the members of the Company to be held on Thursday, the 18th day of May 1950 at 2-30 P.M.

The Directors have pleasure in submitting their Annual Report with Balance Sheet and Profit and Loss Account showing the position of the Company at 31st December last.

The balance of profit after deducting all charges and providing for taxation amounts to £ 1,145,693-13s-11d which Directors recommend should be paid on 19th May 1950 as Dividend.

The Company's relations with the Governments of India and of Assam continue to be good.

The refinery continued to operate successfully throughout the year under review.

On the 3rd day of August 1949, an extraordinary General Meeting was held and passed a resolution converting the 14,000 7 per cent. Cumulative Participating Preference Shares of £ 1 each into ordinary shares of £ 1 each ranking *pari passu* with the existing Ordinary shares.

Lord Bilsand, Sir William Fraser, Mr. T. T. McCreath, Colonel High B. Spens and Mr. W. E. Eadie have accepted invitations to join the Board. In accordance with the Articles these appointments now come up for confirmation by shareholders.

The Director retiring by rotation at this time is Mr. W. A. Gray, who, being eligible, offers himself for re-election.

The auditors, Messrs. Brown, Fleming & Murray, have indicated their willingness to continue in office.

By order of the Board,
(Sd.) E. Colman.
Secretary."

BRITANNIC HOUSE,
FINSBURY CIRCUS, LONDON E.C.2,
17*th May* 1950.

One thing which is striking in the report is that 140,000 cumulative participating preference shares of £ 1 each were converted into ordinary shares of £ 1 each ranking *pari passu* with the existing ordinary shares. What appears to me is that the profit for preferential shares as secured profit 7 per cent. was converted into ordinary shares profit with the object of giving more dividend because the profits on the capital outlay were large and roughly calculated were more than three times the paid up capital. Now for the purpose of percentage of profit on the basis of accepted formula *viz.*,

$$\frac{\text{Profit} \times 100}{\text{Capital}}$$

if the figure of net profit *viz.*, £ 1,145,693-13s-11d be taken as £ 1,146 roughly and the capital £ 450,000 as 450 eliminating three figures both ways, in arithmetical calculation the profit percentage would be $\frac{1146 \times 100}{450}$ equal to about 255 per cent.

Put in other words the net profit for the year 1949 was approximately 255 per cent. I am conscious that the first charge on the profit is of essential deductions but the same as borne out by the Balance Sheet has already been deducted from the Gross Profit which was shown under the heading 'Trading Profit' after charging administration expenses to be £ 2,780,523-1-0. Accordingly the net profit may

well be called the appropriation profit and out of this profit bonus shall have to be determined. The other circumstance to be considered is that bonus for the year 1949 is alleged to have been paid by the Company. Shri Basu however controverting this assertion contended that the workers received the payment subject to protest and furthermore in the case of fresh Reference the question can be gone into on its merits. A reference was made to the Union's resolution passed in the General Meeting (Exhibited in ZZ/5 series). This document reveals that a resolution was passed (as a copy of which is on page 42 of ZZ/5 series) to the effect that the general membership of the Assam Oil Company Labour Union fully agree with the decision of the General Council Members meeting of Assam Oil Company Labour Union held on 19th September 1950 in not accepting one month's bonus for 1949 against their legitimate demands for three months wages as bonus. It was also resolved that the meeting requests the Company to postpone the payment of one month's bonus for 1949 until this issue is settled. The resolution of 18th December 1949 a copy of which is at page 43 of ZZ/5 series relates to the bonus of 1948 and it was stated that the same was also accepted under protest on the advice of the Union, and a demand was made for further payment of two months more bonus for 1948 over and above the payment already made for one month.

Now in regard to the year 1948 the payment was made in terms of the prior award and no objection was taken. Subsequently at the time of 1949 payment, when protest was lodged, a resolution regarding 1948, was also made but it was too late then and the matter was referred to the Chief Labour Commissioner who agreed with the position taken up by the Company as embodied in his report (Ex. VV) page 4 of which the operative portion reads as follows:

> "The employees have already accepted the bonus which the Company paid for the year 1948. At the time of accepting the bonus which was at the rate of one month's pay for each worker, they did not raise any objection. This was also the rate of Bonus allowed in the award for the year 1947. Now after having accepted the bonus and the Company having made up their accounts on that basis. it is hard on the Company, if they are asked to consider this question again. In my opinion no valid ground has been made for re-opening the question of bonus for the year 1948."

In view of the fact that the payment was accepted and no objection was taken I don't think demand for 1948 can be pressed once again. I hold accordingly.

Regarding the payment of bonus for 1949 it is abundantly clear from the discussions made above that the Company made large profits in 1951 *i.e.* about 255 per cent. on the capital outlay and as such the labour was fully entitled to fair appropriation in sharing the profits. It was however not clear on the record as to whether full payment has been made for the year 1949 also at the rate of one month's wages. In the course of arguments it was generally stated that offer of bonus at the rate of one month for the year 1949 was made to the labour but they refused to accept it and claimed bonus at the rate of three months' wages. The statement of claims and written statement are also silent on this point and it appears that the offer was made during the pendency of these proceedings but the Union registered protest. This fact was admitted by the Company. Accordingly in view of the enormous profit made by the Company in the 1949 I think the labour is entitled to three months' basic wages as bonus for the year 1949 and in case one month's bonus has already been paid the balance will be paid within three months with effect from the date of the publication of the award.

Profit and Loss Accounts

Coming to the Balance Sheet of 1950 Ex. ZZ/12, the balance of trading profit after deducting administration charges etc., in 1950 was £2,532,594-18-11 as against £2,780523-1-0 of 1949. The net balance of profit recommended for dividend in 1950 as borne out from Ex. ZZ/12 has however come down to £418.804-11-4 as against £1,145,963-13-11 of 1949. The capital paid up in ordinary shares of £.1 in 1950 is £. 400,000-0-0 *i.e.*, almost the same as it was in 1949. The Annual Report attached with the Balance Sheet (Ex. ZZ/12) states as follows:

"*Ex.* ZZ/12

"The Directors have pleasure in submitting their Annual Report with Balance Sheet and Profit and Loss Account showing the position of the Company at 31st December last.

The balance of profit after deducting all charges and providing for taxation amounts to £418,804-11-4 which the Directors recommend should be paid on 31st May 1951 as Dividends.

The Company's relations with the Governments of India and Assam continue to be good.

During the year a considerable eastern extension of the productive area of the field was proved.

The Refinery continued to operate successfully throughout the year under review.

All prospecting operations in India which hitherto had been carried out by the Burmah Oil Company (India Concessions) Ltd. were taken over by the Assam Oil Co, Ltd., from the beginning of 1950. The test well at Barsilla was completed at 7,100 ft. but found only traces of oil of no commercial value. A further test at Nichuguard is in course of preparation.

The Directors retiring by rotation at this time are Mr. W. A. Gray and Mr. T. T. McCreath, who, being eligible, offer themselves for re-election.

The auditors, Messrs. Brown, Fleming and Murray, have indicated their willingness to continue in office.

Britannic House.
Finsbury Circus,
London E.C. 2
30th May 1951.

By order of the Board,
(Sd.) K. Colman,
Secretary."

From the perusal of this report it would appear that more money was spent in digging new wells but the report does not give the reasons which contributed to the reduction of profits to the extent of about £. 72,700. The learned Counsel of both sides did not touch this aspect of the question which materially affects the payment of bonus so far the 1950 is concerned.

On the examination however of the accounts for the year ending 31st December 1950 (Ex. ZZ/12) I find that the Balance of Trading Profit appears to be less by £. 2000,000 or so,

1950	1949
£. 2,532,594-18-11	£ .2,780,523-1 0

but the balance of profit recommended for dividend—net is shown £. 418,804-11-4d only in 1950 as against £. 1,145,693-13-11d of 1949. Obviously the balance of profit in the year 1950 has come down appreciably although the difference of gross trading profit of 1950 and 1949 is not much. This appears to be due to the heavy depreciation amount written off by the Company in the year 1950 *viz.* £.613,865-5-11d as against £. 350,180-16-6d. for the year 1949. Put in other words the amount of £. 298,705-0-0d has been written off as depreciation more than the depreciation of 1949; but the income tax and the overseas taxation amount as shown in this exhibit exceeds the amount paid for the year 1949. The exact amount given in 1950 for income tax is £. 1,500,000 as against £. 1,380,000 for 1949. It is not intelligible as to how the amount of income tax rose in 1950 when the amount of depreciation was higher as compared with 1949. It is just possible that the income tax authority did not allow the whole amount of depreciation as mentioned in the Balance Sheet. In these circumstances the Balance Sheet of 1950 either does not present the real state of affairs or the amount of depreciation is presumably more and the amount of net profit in the year 1950 has therefore been shown less by £. 726,889-0-0d. in the year 1950. It is also significant to note that the Paid Up capital on ordinary shares of £.1 each in the year 1950 is almost the same as it was in 1949 *viz.*, £. 450,000-0-0d. Judged in the light of above comments I think the net profit shown in the year 1950 in Ex. ZZ/12 *viz.*, £. 418,804-11-4d is not a safe guide for the purpose of appropriation of bonus. The difficulty however is that there is no other material on the record from which the actual profit for the year 1950 could be ascertained and the reasons given in the report *viz.*, that new wells were sunk are not supported by accounts of expenditure and the losses incurred in that connection. Mr. Glower, Senior Assistant General Manager of the Company (Ex./11) came into the witness box but neither he said anything

regarding bonus, nor any question was asked by the Union Counsel in cross-examination. In these circumstances, I have no alternative but to determine the bonus for the year 1950 on *ad hoc* basis in consideration of the financial position of the Company in the year 1949 and the general finance with a stabilised production as well as the long standing grievance of labour who have not been getting proper share in the prosperity of the Company. I would propose to allow two months' basic wage for the year 1950 with the direction that the bonus shall be paid within three months with effect from the date of the publication of the award.

Before leaving this issue, it may be pointed out that the demand of the Union in regard to the payment of bonus was based on a percentage of dividend but as stated above Shri S. K. Basu surveyed the whole ground so far profits are concerned and on the examination of the Profit and Loss Account (Exs. ZZ/11 and ZZ/12) I have also concluded on the basis of profit for both years 1949 and 1950. The next question is as to whether bonus should be on the score of monthly basic wages or inclusive of dearness allowance. So far Tribunals have generally awarded bonus calculated on the total basic wage earned during the year or for a number of months' wages. The controversy to absorb dearness allowance as a part of basic wage is already afoot and has not yet been resolved although references has been made in the Planning Commission Report and some other Central Government publications. At any event in the case of Assam Oil Company a great majority of workers are daily rated and the amount of dearness allowance exceeds the basic wage and it would be straining the finance beyond legitimate limit in view of the future risks to allow bonus inclusive of dearness allowance. I would therefore direct that bonus shall be paid according to the scale given above *viz.*, three months' basic wages for the year 1949 and two months' wages for the year 1950 calculated on the scales in force in the year 1949 and 1950 to all employees of the Company who were on its rolls in the years 1949 and 1950 after deducting such accounts as have already been paid in respect of the year 1949 as discussed above; on the same terms and conditions on which bonus at the rate of one month for the years 1947 and 1948 have already been given. I would, of course, make it clear that persons who are eligible for bonus but who are not found in the service of the Company on the date of payment shall also be paid within one month of their claims submitted after the period of three months when the direction of the payment of bonus is to be carried out from the date of the publication of the award.

Issue No. (4).—Principles to be laid down for promotion through a Board of Examiners according to set standards as uniform as possible and abolition of unjust and unnecessary test for all intermediary grades except an initial test.

The demand under this head was explained in the statement of claim as usual not as a demand in exactitude but in the form of arguments as to how promotions should be given and the assessment of job values be made with a prayer that certain principles in this respect be laid down. Shri S. K. Basu, however, in the course of argument put the demand under various heads and I propose to deal with the issue under those heads. The one outstanding item is for the abolition of Trade test which are held off and on for the purpose of promotion from one grade to the other amongst the artisans. The other is for the appointment of a Selection Board representative of the employer and the Labour Union for the determination of seniority and promotion. Under the third head demand was made for the increase in the number of higher grade as well as creation of selected posts. Fourthly that if tests are continued separate trade test be held at Tinsukia. Fifthly, that the general principles be laid down governing the matter of promotions and grades.

The reply of the Company to this demand as stated in the written statement was that promotions constitute a management function and the test and assessment of Jobs are necessary to avoid favouritism and ensure efficiency. It was submitted that due consideration is given to seniority whenever a promotion is made. Reference was made to the previous award whereby the then Tribunal rejected the demand. A detailed note (Annexure No. II) was also appended with the written statement giving details and history of the Trade Tests which have been evolved after long experience and trials.

Shri S. K. Basu arguing on behalf of the Union made a critical survey of the grade tests and contended that before an appointment is made of an artisan he has to undergo five years apprenticeship course and after that any test is wholly superfluous and the method is being maintained to deprive the workers from going up to higher grades. These tests furthermore, it was argued, were

a source of favouritism and broad discontent amongst the workers. A reference was made to the statements of WW/5, WW/6, WW/12, WW/35 and WW/36 so far oral evidence was concerned. Of these witnesses, WW/5 Jyotsnamoy Dutta deposed that the tests are unjust because the workers employed in different grades do the same kind of work without any distinction. The work that one is called upon to do in Grade I is the same in nature and scope as that which is done by a worker in the higher grade in the same department for instance Machineshop. The witness proceeded that there is a shift system in vogue in this Company *viz.*, morning shift and afternoon shift and the work allotted to a worker in one shift in a particular machine if not finished by him within that shift is continued by his successor in the following shift and the successor will continue the job in the next shift does not always belong to the same grade as his predescessor. The witness admits that the workers have stopped attending test examinations because they consider these tests as unfair and unjust. A representation was also made to the General Manager with a chart Ex. C giving the names and number of Improvers and Artisans with the respective grades and designations with operating periods who are operating same machines in successive shifts according to Workshop Superintendent chart issued in July 1951. WW/6 *Monmotho Chandra Das* states that he is drawing daily wages of Rs. 1/12/- as Improver in Machineshop and appeared for the test in 1945. The test that he was required to do was of the nature of his usual work but he was made to fail in that test. The machine which was allotted to him was not suitable for that work and so he could not succeed. After three months he was again asked to sit for a test and he passed. Then he was confirmed as a Turner of Grade I Machinist scale of daily wages of Rs. 2/4/-. The witness further stated that he was asked to sit for the test a few months ago in 1951 but he and the other fellow workers refused to sit for the test because of its unfair nature and that all kind of work in the Machineshop can be done equally well by all grades of mechanics Grade I to Grade III. In cross-examination the witness maintained that the tests are unfair because they have no relation with their daily work which the workers are asked to do and which they actually do. Again said when the first test was held the questions that were put to him had relation with the daily work and that he did not appear any other test. WW/12 *Salleh Ahmad* is a fitter in grade I in Section 3 of Out Engineering Department. With regard to the Trade Tests he states as follows:

> "If we ask for promotion we are asked to appear for test in the workshop. These tests are set to us regarding work which we have never seen nor dealt with under the Company in the course of our work. After this test we are often told that we have either failed in drawing or in some other manual work of the practical nature. These tests have no relation to our daily work.
>
> Fitters of all grades from Grade I to Grade III do the same kind of work and of the same standard. As regards Improvers and Jugalis they are to do the work allotted to them by us and they also learn by practical experience and training under the fitters. The responsibility for the work is that of the gangmen. These tests are quite unnecessary because the work that one does as a Grade I fitter is the same that one has to perform even as a Grade III fitter. We therefore object to these tests."

In cross-examination this witness deposed "We want that all the fitters should be in one and the same grade, we do not want these separate grades instituted by the Company and that all skilled labour should be put in one grade. That is our demand before the Tribunal."

WW/35 *Monindra Ch. Dey* is also a fitter in the Tin Factory at Tinsukia. He has not exactly touched the question of Trade Test in his deposition but with regard to grades states as under:

> "All machine operators, leak menders, handle soldermen, beltmen, and Assistant Sirdars should be placed in skilled Grade I Rs. 3 to Rs. 5 per day. The Sirdar and Tin Inspector be placed in Grade II. We claim Grade III on a wage of Rs. 5 to Rs. 7."

WW/36. *Abdul Hamid* speaks in the same strain that when we ask for promotion we are told to appear a test but those who pass the test of Grade III are doing the same work as those are in Grade I. When they compel us to appear a test we are examined on a work which has nothing to do with our work at Tinsukia and in no way connected with our daily work. There are altogether 14 general Installation Fitters including myself of whom two are in Grade III, three in Grade II and the rest are in Grade I. There is no difference in work that they

are doing and they have to do the same work. Our work is sometimes done by Helpers who are semi-skilled. Of the documentary evidence produced and relied upon in this connection Ex. C referred to in the statement of one of the witnesses is a chart giving names of a number of Improvers and Artisans wherein the machine number upon which they are working and the operating period are also mentioned. It was sought to argue that one Artisan could work as good at the machine as another who was in a different grade. Ex/D to which reference was made in arguments, is a representation of the Machineshop Operators made to the General Manager and the subsequent correspondence over it. The argument was that the labour has been agitating against these tests by all sort of representations and correspondence made with the management.

On the other hand Shri Sen in reply contended that such tests are essential to ascertain the efficiency of the Artisans for work and these tests instead of engendering favouritism rather help a real efficient Artisan to take a higher place in the higher grade. It was further argued that the question at any rate is one of management function and the Company can ill afford to treat all as equals. It was maintained that promotions are given after due tests and in case of supersession appeal lies to the General Manager and even provisions of Industrial Disputes Act can be invoked if any promotion is withheld on account of *mala fides* or bad labour practice. Reference was made to the statement of Mr. Glover EW/11, Mr. Thomas Arthur (EW/9) and EW/10 Shri K. C. Roy. *Mr. Thomas Arthur* (*EW/9*) states that the Company has a system of promotion which is made on the basis of seniority. The Drilling Superintendent is the determining authority in consultation with the Departmental Officers. *Shri K. C. Roy* (*EW/10*) deposed that the standard laid down for Trade Tests is reasonable. The rules for Trade Test have been framed as borne out by Ex. 20. The witness proceeded that in his opinion a workman of average ability should pass the test without difficulty and that Trade Tests are properly and fairly conducted, and that there has been no complaint of unfair test. The one alleged by the other side was found incorrect on examination. *Mr. S. T. Glover* (*EW/11*) deposed as follows:

> "*EW/11.*—The artisans are graded in three grades I, II and III by means of grade tests regarding their skill. Initially the grade tests were introduced in 1940; since that date in case of specific tradesmen other tests were also added. Trade tests have remained substantially unaltered since 1946. The standard required for trade test is a reasonable one. In this connection I produce a chart Ex. 21-A about Artisans grade test in Assam Oil Company. I do not consider that trade test be abolished. In respect of the wages in my view the workmen are getting fair wage as commensurate with their work and these wages are fixed in accordance with the terms of the last award of 1949. The last award referred to above has been implemented by the management in all respects. I consider that the total emoluments which our workmen receive in my view are fair. The management has not introduced various grades in supersession of the last award. In that award the learned judge made use of four wage brackets for the purpose of determining the increments within those brackets. It has been suggested that any workman whose salary fell within these maxima and minima should have a scale of pay in conformity with those maxima and minima. This clearly cannot have been the intention since those wage brackets were in use by the Company prior to the last award and within those brackets the Company prior to the last award had numerous scales of pay for different categories of workers according to their jobs. No change has been made in this policy. With this exposition about the grades I still maintain that the terms of the award have been implemented in all its aspects. In terms of the award we have fitted all our workmen into their correct grades and scales of pay."

Now in the study of all this evidence I have looked into Annexure No. II which deals with the method of Artisan Grade Tests, their history, the procedure and general principles upon which these tests are based. The employer has also filed Index for each test and the graphs pertaining to different jobs and their designations covering about 40 pages. The whole procedure appears to have been based on a definite method and on scientific lines. In an industry where the Artisans have to deal with high power machines and some of the works are alleged to be of hazardous nature it does not stand to reason that one and all should be taken in the same category as urged by WW/6 and WW/12 who went to the length of saying that all fitters should be put in the same grade. This position is incomprehensible when the Union at the same time has asked for for different grades beginning with higher emoluments in the matter of pay

scales. WW/36 has gone further in stating that although there are 14 general installation fitters, of whom two are in grade III, 3 in grade II and the rest in grade I, but there is no difference in their work and sometimes this work is done by helpers who are semi-skilled. It means that there should be no grades or classes and all be treated equal. I think, in the matter of promotion if all artisans are put in one grade it would not only impair the efficiency but would damp all enthusiasm for higher knowledge and aptitude of the job. The main argument on the Union side is that the artisan of one grade can work equally in place of a man of another grade and as such he should be held entitled for a higher grade without undergoing any grade test. The other aspect of the question appears to have been conveniently forgotten *viz.*, the difference is of efficiency and not of understanding the job only. Again if a lower grade man works in upper grade he gets the opportunity of handling the work entrusted to a higher man and at the time of test he should have no difficulty in getting through the test. There is another approach to the question which may be illustrated with reference to a technical man of any other department say "Engineering or medical". I thing it would create a piquant situation in service if a gentleman fresh from the college with Technical degree should claim the grade and pay of an Engineer or Doctor who has put in say 10 years service. It is just possible that a brilliant student may come out with laurels and could have the scope of going up early but to claim that there should be no test more especially in a work over machinery. I think it would be creating an intolerable position. This demand was hotly contested by the Union but the anxiety of the workmen appears to be that they should be saved from test. This mentality I would rather discourage. Zest for work and to show one's worth without being afraid of any test is the one test of promotion which one should not shirk. Of course favouritism, bad labour practice on the part of officers must not be brooked. But the remedy for that is provided under the Act and the Standing Orders of the Company. I am therefore constrained to come to the conclusion that the demand of labour is misconceived and cannot be accepted.

On the legal aspect of the question also interference is not called for in the matter of promotions as held by Labour Appellate Tribunal in U. P. Electric Supply Co. case (Labour Law Journal—1951—Vol I—page 456). The Tribunal held that in the matter of promotion from one grade to another efficiency and other qualifications count besides seniority and that in the matter of promotion it is the management and management alone which is to decide the matter.

Regarding Selection Board: The argument on behalf of the Union was that the matter of promotions should be entrusted to a Board constituted of equal number of representatives of labour and management. No instance was cited whether such a procedure has been introduced in any industrial or commercial concern and in the light of the decision of the Labour Appellate Tribunal quoted above this demand is also devoid of any merit. With regard to the increase in the number of higher grades and the creation of selected posts I may say at the outset that these two demands run counter to the demand of doing away with the grades, as claimed in the matter of Trade tests. I have noted in the course of argument as well as on going through the general service conditions of the workers that some of the employees are suffering from this disadvantage for want of time scale increment within a grade but this has been met now in the revised scale. So far the demand for the increase in number of grades this has also been considered in the revision of pay scales whatever was possible and the point does not admit of further discussion under the heading of promotion. The next demand *viz.* creation of selection posts in other words relates to the creation of a highly technical grade. The creation of new posts is a matter pertaining to the classification of jobs which has already been dealt with and can be pressed if advised in the Advisory Committee to be constituted for the purpose of classification. The last item under the heading of promotion is the demand for the separate Trade Test at Tinsukia if test continues. Now as held above the tests shall continue and I think the demand is reasonable because those who work at Tinsukia can undergo a test on the tools and machinery upon which they work and in all probability they might have the disadvantage of undergoing a test at a different place handling with a different machinery. I would therefore recommend that the test in the case of Tinsukia workers be held at Tinsukia excepting such cases where any one wants to qualify himself for a particular job at Digboi where he has to handle the tools and machinery set up at Digboi.

Issue No. (5).—Demand for 10 days Casual Leave with full pay to all workers and grant of Casual Leave without requiring a prior application in case of emergency.

The demand of the Union in regard to leave is for the grant of 10 days Casual Leave with full pay to all workers. It was further alleged that this Casual Leave should require no prior notice in case of emergency and be allowed at least five days at a time. The present position with regard to leave is that seven days casual leave is granted to monthly rated workers with pay and in the case of daily rated workers without pay. The contention of the labour is that there is no justification for this undue discrimination between the monthly rated and daily rated workers in the matter of leave. It was argued that the monthly rated workers get the benefit of one month's privilege leave while the daily rated workers receive 15 days benefit only. The stand taken up by the Company on the contrary was based on the terms of the last award thereby 7 days casual leave (non cumulative) was awarded in favour of monthly rated workers but was declined in the case of daily rated workers who are left to the provision already existing in the Standing Orders regarding Casual Leave. Shri S. C. Sen arguing on behalf of the Company contended that there are more than 6,000 daily rated labourers and in case they are allowed casual leave with pay the Company shall have to incur huge expenditure besides the dislocation of work which would occasion by availing this privilege. It was further stated that the daily rated workers are allowed to go in batches according to a roster maintained by the Company, and in case all daily rated workers be allowed casual leave with pay it would upset the whole arrangement, and the work of industry. The learned Counsel also opposed the demand for extension of casual leave period from seven to ten days as asked for and referred to an Engineering award of West Bengal Tribunal (published in Calcutta Gazette of 3rd July 1948) and the subsequent award regarding Engineering firms (published in Calcutta Gazette of 27th September 1950). Now some of these Engineering firms were also a party to the Engineering award of Bombay and there has been a conflict between the two decisions. There are other awards also where the question of leave was discussed but there is no unanimity in the conclusions arrived at. In the award of Hindusthan Construction Co. Ltd. and 9 other companies of Bombay 15 days casual leave was allowed subject to a maximum of 5 days at a time. In the Bengal case referred to above the Tribunal was of the opinion that the provision with regard to annual leave with wages under section 79 of the existing Factories Act should be left to operate in the usual course allowing workmen to earn continuous leave varying from 10 to 15 days inclusive of Sundays and the provision in the previous award regarding 5 or 6 days other leave with wages, should be left unaltered. Reference was also made to Labour Appellate Tribunal decision in the case of Jeewanlal Ltd. and their workmen (Labour Law Journal—1951—Vol. II—page 774) wherein it was held that non cumulative casual leave with pay and allowance is a regular feature in industrial concern. The Industrial Tribunal in this case granted the demand of the labour to the extent of 7 days with pay and allowances subject to exigencies of service. The Labour Appellate Tribunal on appeal by the employer held that appeal was not competent as no substantial question of law was involved but at the same time remarked that leave has become a regular feature as stated above. Now so far as the legal aspect of the case is concerned this decision in the case of Jeewan Lal Ltd. which relates to the workmen of Crown Aluminium Works Bombay which is one of the factories of Messrs. Jeewanlal, Bombay, appears to have resolved the question so far daily rated workers are concerned. But my predecessor in the previous award of 1949 allowed 7 days casual leave with full pay to the monthly rated workers only and remarked that he was not inclined to allow casual leave to the daily rated workers excepting as provided for in the Standing orders. Standing Order IX deals with leave and the relevant portion about casual is reproduced as under:

Standing Orders: *Page* 4:

"(1) *Casual Leave.*—May be allowed casual leave of not more than 2 days leave at a time and not exceeding 7 days per annum with pay; one full day's notice to their Departments should be given where possible. This leave is not cumulative and cannot be taken in conjunction with privilege leave.

(3) *Men on Daily Rate.*

(a) *Privilege Leave.* Will receive 15 days leave with pay for each completed year of service and this leave may be taken in three portions.

Festival Holidays. 11 festival holidays per annum with pay (of which two shall be Independence Day and Mahatmaji's Birthday, the remaining nine being appropriate to their communities).

(b) 28 days leave without pay in respect of each completed year of service at the time of his going on leave. Except in special circumstances, leave without pay is granted only at the same time as leave with pay.

(c) To accumulate leave with pay up to 45 days if his Province of Origin is more distant than Bengal; at the same time such man can accumulate 84 days leave without pay. Men of the Province of Assam and Bengal may not accumulate more than 30 days leave with pay and 56 days leave without pay.

(d) While a man is on leave with pay he will accrue leave but he may not take the amount as extension to the leave he is enjoying.

(e) Pay upon his Festival holidays only if he is present at work on the working days preceding and following the holidays.

(f) Double pay if his Department requires him to work on his Festival holiday, provided also that he is present on the working day following the holiday.

(g) *Casual Leave.* May be allowed casual leave as follows, one full day's notice to their Department being required where possible:—

(i) For 26 days per month worker:

Up to 2 days at a time without pay and not more than 3 days in any period of 6 months.

(ii) For 30 days per month workers:

Up to 2 days in each month without pay. In addition, in any period of 6 months a further 3 days without pay may be allowed.

All such casual leave will be deducted from Annual Leave without pay."

The position according to the Standing Orders so far daily rated workers are concerned is that they are allowed 7 days Casual Leave without pay. The contention of Shri S. C. Sen that the grant of leave to daily workers would upset the work of the industry is therefore illusory because the question is not of leave but whether it should be with or without pay, besides the number of days which is to be considered separately. The daily rated workers although their number is very large are the workers who are mostly responsible for the production and when the principle of granting leave with pay has been accepted under the Factories Act and approved by the Labour Appellate Tribunal in the case of Jeewan Lal Ltd. *Vs.* their workmen, I think, there is no escape from allowing the period of leave with pay to the daily rated workers also. I am conscious that it would add in the expenditure and the question of capacity to pay of the Company would come in but a week's leave in a year has been accepted in principle and I do not think that it would affect materially the finance of the Company as urged by their learned Counsel. I would, therefore, allow the demand to this extent that the daily rated workers will also be entitled to 7 days casual leave in a year with pay subject to the exigencies of service. In view of the fact that the period has since been determined by my learned predecessor and the same is in accordance with Labour Appellate Tribunal's decision, I do not see any good reason for the extension of the period as asked for by the Labour Union.

Issue No. (6): Gratuity or termination allowance on death in addition to Provident Fund

The demand of the Union is that the Company should grant a gratuity or termination allowance on death, termination of service by the Company, or retrenchment and on voluntary resignations on the following terms:

Gratuity or termination allowance:

"(1) On the death of an employee while in service—one month's pay for the monthly-rated and four weeks' pay for the daily-rated workers including Dearness Allowance and House Allowance for each year of service or a part thereof, subject to a maximum of 15 months' pay to be paid to his heirs or executors or nominees.

(2) On retrenchment, or in any case of wrongful or illegal dismissal or victimization—the same basis as above.

(3) On voluntary resignation or retirement after 10 to 15 years of service—10 to 15 months' pay according to the number of years of service completed.

For the daily-rated a month's pay means 4 weeks' pay."

It was contended on their behalf that the Company's rules regarding gratuity are quite out of date and unfair in the light of various awards and model rules and that in Railway and Government service both Provident Fund or Gratuity

or Pension are being paid. Shri S. K. Basu arguing on behalf of the Union referred to some previous awards of Industrial Tribunals in support of the demand. The demand was stoutly resisted by the Company on the ground that there has been no change of circumstances after the previous award of 1949 when this question was fully gone into by Mr. Justice Varma. It was also stated that the existing rules of gratuity are reasonable and workmen are not eligible to another benefit when they are adequately provided by the benefit of Provident Fund. Shri Sen also cited some published authority whereby the benefit of gratuity was not allowed and maintained that the circumstances are almost parallel in the case of Assam Oil Company. With regard to the principles laid down in various awards and decisions of the Labour Appellate Tribunal it is difficult to fix any hard and fast rule for the simple reason that such benefits are to be awarded in consideration of particular merits of such case. I would, however, deal with some of the important cases relied upon by both sides. In the case of Larson & Toubro Ltd., Bombay and their workmen (Labour Law Journal—1951—Vol. II—Page 221) the Labour Appellate Tribunal held that they are quite unable to accept the proposition that there ought to be only one form of retirement benefit. Another case upon which reliance was placed by the Labour is of Burmah Shell Oil Storage & Distribution Company (published in Industrial Court Reporter, Bombay—March 1952—page 278). The Tribunal observed that though the Provident Fund was slightly higher the amount that would become available to a person on his death, retirement or disablement, Provident Fund would not be sufficient provision for him and it is just and equitable that a gratuity over and above Provident Fund should be awarded. Some other cases cited by Shri S. K. Basu relate to 1948 and need not be discussed. The one of 1949 is of General Motors (India) Ltd. summary of which was published in Indian Labour Year Book 1948-49—page 310. The corresponding number of Labour Law Journal is not available for full text of the decision, but according to this summary referred to by the Counsel the Company was directed to pay gratuity to its employees on a scale detailed underneath in the summary. Shri S. K. Basu urged that the demand be met in particular on the basis of this scheme. Reference was also made to the case of General Assurance Society Ltd. award (published in Labour Appeal Cases—March 1952—page 124) whereby the scheme of gratuity awarded by this Tribunal was approved with some modification. Shri S. K. Basu also relied upon the decision in the case of Army & Navy Stores Bombay (Labour Law Journal—Vol. IX—1951—page 31) wherein the Labour Appellate Tribunal held that as the profit of the Company was dwindling there was no scope for awarding gratuity for a month's wage and reduced it to half month. Reference was also made to Burmah Shell Oil Storage & Distribution Company case of 1950. But a recent decision of 1952 pertaining to the same Company has already been discussed above and as such it requires no consideration.

On the other hand Shri S. C. Sen arguing on behalf of the Company, maintained that the legal opinion is divergent and no authority was in point so far the legal aspect of the matter was concerned. His argument was that in some of the Bombay cases two benefits were allowed by the adjudicators but in the case of Bengal and Assam the circumstances differ and the adjudicators were not prepared to allow two benefits. It was next argued that Mr. Justice Varma in the previous award after going through all the facts and circumstances, which exist even now, rejected the demand and it was unfair on the part of the labour to make a demand without establishing any change of circumstances. A reference was made to Fair Wage Committee Report and it was submitted that the principle laid down in that report is that wages and benefits should not go out of tune with local practice. Instead of citing any one authority in support of his contention Shri Sen referred to Industrial Awards Analysis of 1951 (published by the Government of India) wherein at Appendix V—page 184 different awards are quoted for the purposes of gratuity and Provident Fund. It was maintained that *Ratio Decidendi* of these awards would show that in Assam gratuity was allowed in very few cases and the trend of decisions is to allow one benefit only. Reference was also made to Bihar Labour Enquiry Committee (page 45) in which it was argued, valuable observations were made by Dr. Rajendra Prasad who conducted the enquiry.

Now on the examination of these authorities I find that almost all the decisions relied upon by Shri Basu relate to commercial concerns and the one of Burmah Shell Storage Co. is also not of a manufacturing concern. On the perusal of Appendix V attached with Industrial Awards Analysis, it also appears that there is conflict of opinion on this point. My learned predecessor before whom the demand was also pressed two years back in this connection rejected the demand and held that the terms of the Company are quite reasonable. These terms are

incorporated in Notification dated 29th December, 1937 referred to in the prior award at page 123 and read as follows :

"As there is still some misunderstanding about the principles governing the granting of gratuities for long service they are repeated below:

1. At its own discretion in approved cases (not by rule), the Company has been accustomed in the past to grant retiring gratuities to men ceasing to work after 25 years continuous good service, and sometimes even after 20 years.

2. No change is being made in the method of deciding whether or not a man is eligible for a gratuity; if he is eligible the amount will in future be calculated as follows :—

   (a) For service before 1st January 1921, half a month's pay for each year of service before that date.

   (b) For service between 1st January 1921 and 31st December 1937, gratuity is allowed on the basis of what the Company's contribution to the employee's Provident Fund would have been had both subsidiary and Anna Funds been in force during the whole period. If the employee has actually been a member of either fund for part of the time he receives his reward for that period from the Company's contribution to the Fund. The Company does not pay gratuity in addition for this period.

   (c) **For service after 1st January 1938, all employees** should be members of either the subsidiary or the Anna Fund. Therefore no gratuity will be paid independently of the contribution which the Company offers under the funds."

It will be seen that those who are in the Company's service before the Provident Fund existed have been provided for in the matter of gratuity but after having introduced Provident Fund Scheme, the Company called upon all the workers to avail the benefit of Provident Fund to its fullest extent. Shri S. C. Sen in his argument furthermore led great stress on another factor that under the new Provident Fund Scheme the question of benefits has been very much enlarged as indicated in the preamble and if the principle of gratuity is also extended in Industrial concerns working under factories Act it would go beyond legitimate limits. This question came in for discussion in the case of Jeewan Lal Ltd. Vs. their workmen (II Labour Law Journal—1951—page 774) and the Labour Appellate Tribunal repealed the objection of the Company to the framing of a scheme of gratuity for the Company's workmen in Bombay on the ground that an award of the Industrial Tribunal of West Bengal refuted the demand for a scheme of gratuity for the workmen in industrial concerns. On merits, however, this decision does not furnish a parallel case inasmuch as in the Company of Jeewan Lal Ltd. the number of employees was 471 only and their Lordships observed that they did not think that the payment of gratuity as ordered by the Tribunal would be too onerous for the Company. It was also pertinently remarked in this case at page 777 that the question whether a gratuity scheme should be allowed or not must depend upon the facts and circumstances of each case. Now the contribution of Provident Fund in that Company was 6¼ per cent.; on the other hand in the case of Assam Oil Company the Provident Fund contribution on the Company's side is 8:1/3 per cent. and the number of workers is more than 6000.

On careful consideration of all these facts and circumstances I feel inclined to think that in the case of industrial concern of the type of Assam Oil Company where the workers are in thousands and cases of discharge and dismissal occur so often, no clear case has been made out for granting the benefit of gratuity on merits over and above that of Provident Fund which scheme is quite liberal. I hold accordingly.

Issue No. (7).—Demand for the Joint management of Provident Fund by giving representation to the Union.

The demand as put in issue No. (7) is a simple one *viz.* that Labour Union be given representation for the Joint management of Provident Fund: but as explained in the course of arguments it was amplified into the reconstitution of the Provident Fund rules and to overhaul the whole system. It was argued that two rules in particular *viz.* 12 and 13 be immediately revised so as to entitle all permanent workers to the Company's contribution without undue restriction. Rule 12

deals with the penalty for committing any act of embezzlement, neglect or default and thereby causing loss or damage to the Company. Rule 13 provides that if any member be dismissed or retires from the service of the Company without consent and having completed an unbroken service of five years for any reason other than ill health he was to be paid only the amount then standing at his credit as his own contribution. It would be seen that the demand is not confined only to representation on Provident Fund Trust but for change of Provident Fund rules also. The Company in reply to the demand submitted that in the last adjudication the Tribunal held that the change in the rule of Provident Fund could not be done in the absence of the Trustees of the Provident Fund who are not a party to the dispute. It was urged that this time again the Trustees are not impleaded party to the dispute and the Tribunal is not competent to adjudicate upon this demand. On merits it was stated that the rules which are embodied in Annexure No. 3 marked D with the written statement are quite fair and equitable, and no change is called for. Shri S. K. Basu in support of the demand made quite lengthy arguments and also dwelt on the unreasonableness and harshness of the rules besides arguing on the legal aspect of the contention raised by the other side. In reply to the legal objection first it was argued that although Burmah Oil Company is the holding company having all shares yet Assam Oil Company holds its own, particularly in respect of Provident Fund as borne out by Provident Fund Rules Annexure 3. Reference was made to rule 1 where the definitions of 'Company' and 'Associated Companies' are given, and it was maintained that for the purposes of these rules Associated Companies include Assam Oil Company. Reference was also made to Rules 5 and 6 which deal with A and B account. The argument deduced with reference to these rules was that under rules of Provident Fund the Trustees are to consult Assam Oil Company; hence it is not necessary to implead Trustees as party who represent beneficiaries. Reliance was placed on the principle underlying Order I rule 8 and Order 31 Rule 1 (C.P.C.) as well as upon a ruling of Lahore High Court (1932 Lahore 34), which deal with suits of property vesting in Trustees, exactors, etc. Lastly, reference was made to section 226 of the Contract Act which deals with the obligations of Agents and it was contended that under the principles of Contract Act a duty casts upon the Agent to inform the principal and as such it was not necessary to implead Burmah Oil Company who happened to be the Trustees of the Fund.

Shri S. C. Sen on behalf of the Company dubbed the arguments as irrelevant and contended that the demand of joint management was pushed much beyond its scope for the change of rules also. The Counsel submitted that there are two separate A and B accounts regarding the Provident Fund one dealing with employees contribution and the other with employer's contribution, and the demand does not fall within the scope of industrial dispute, inasmuch as it has no relation with the employment or unemployment of the workers. It was also pointed out that the Provident Fund is being managed by the Trustees who are not a party and any adjudication at their back would not be competent. The Trust moreover is for Burmah Oil Company and other Associated Companies and not exclusively for Assam Oil Company and as such the question of representation of Assam Oil Company's labour does not arise as other Companies are also dealt with by this Trust. The next argument was that the Trustees are recognised by the Income Tax authorities as provided under section 58 (a) to (i) and the demand runs contrary to the Income Tax provisions. It was maintained that change in rules in the light of income tax provision would require recognition by Central Government. The Counsel also dilated upon the liberalization of rules 12 and 13 at some length and contended that by making all such demands the Union was encroaching upon the management function which does not fall within the scope of industrial dispute.

The legal objection now raised with regard to jurisdiction and competency was also considered by Mr. Justice Varma and it was held that the Tribunal was not competent to deal with the matter which directly concerns the Trustees without impleading them as a party. The position is the same and in capacity of the same Tribunal I don't see the propriety of sitting over that finding. The matter has furthermore been complicated by introducing Burmah Oil Company and I would content to remark only that reference to Contract Act and Civil Procedure Code provisions viz. Order 31 Rule 1 and Order 1 Rules 8 are not applicable because the procedure of publicity and proclamation etc. laid down for the applicability of these provisions has neither been gone into nor it was intended under Industrial Disputes Act. Furthermore, Provident Fund to my mind is governed by Provident Fund Act as well as Trust Act and as such, no change can be made by this Tribunal without reference to the appropriate authority by whom the Scheme were recognised. The demand fails on this legal ground. I would however remark in passing that a part of monies is deducted from the wages of the workmen and the

contribution of the employer is also deposited in their name although in a different Account say Account B; and as such it appears to be desirable that the beneficiaries of those monies should have some kind of representation on the body set up for the disbursement of these funds.

Issue No. (8): Revision of Standing Orders already in force with the consultation of the Labour Union.

This demand was put in the following words in the Charter of Demands:

Ex. WW:

"8. Revision of Standing Orders including IX(2)(i) and (g), IX(4) and Section XIV—the respective demands are—'Casual leave shall not require any prior notice in case of emergency'; religious holidays to be granted not in consultation with any communal body or bodies but either with recognised and representative Union or with the Works Committee; types of misconduct are to be properly classified according to their relative gravity or lightness and punishment to be provided accordingly with adequate safeguards against any possible wrongful or undesirable suspensions or dismissal or discharge, etc."

The above concise statement of demand however was amplified in the statement of claim covering six pages from pages 56 to 61. The demand was furthermore, subdivided into several heads, which rather confused the issue. I would however deal with the demand as it stands. Shri S. K. Basu was also helpful in disentangling the essential from the non-essential and confined his arguments mainly to Standing Order IX Rule (14) and with casual reference to the grievances over stoppage of work Casual Leave, extension of leave, and loss of lien etc. The Company's reply to this demand was that a majority of these Standing Orders and Rules are formulated on the lines of Government model Rules and in conformity with the demands made by the Union occasionally and as such the Standing Orders and Rules do not call for any revision. It was further submitted that Standing Order No. XII fully covers the involuntary short term employment and moreover the right to decide in the case of a dispute as to alternative employment is a management function and the Union's prayer for an appointment of an outside official cannot be accepted. Shri S C. Sen while controverting the argument of the other side also maintained that the Standing Orders, based as they are on Model Government Rules, are quite just and reasonable. In the matter of stoppage of work which results in the lay off of workers it was however conceded that as under old Standing Order Rule 12 was left inadvertantly, the Company is now ready to modify this rule in order to bring it in conformity with old rule 12. Some legal precedents were also cited by both sides. Of these one is the full bench decision of Labour Appellate Tribunal in the case of 'Buckingham and Carnatic Mills Ltd.' wherein it was held that even where a workman was discharged under Standing Orders on notice the Tribunal will be entitled to know the reason for the discharge and judge of its fairness. This is being observed and should not constitute the grievance on the part of the Union. The other case cited is a decision of Industrial Court, Bombay in the case of Western India Match Co. Ltd. and their workmen (1952 Labour Law Journal I, page 564) wherein some minor amendments were allowed with change of words. I have had occasion to study the Standing Orders in the disposal of a large number of section 33 applications and I have also looked into the annexure (a copy of Standing Orders) now and I do not see any good reason for change in the Standing Orders which are based on Government model rules except in the case of Rule 12 which relates to the discontinuance of workers service when any work is closed. In this respect as stated above the learned Counsel for the Company Shri S. C. Sen has conceded to modify the rule. I also find from the record that a certain agreement was also arrived at between the parties regarding the stoppage of work and it was incumbent upon the Company to abide by the terms of that agreement. At any rate I would direct that Rule 12 be modified in terms of the agreement within one month from the date of the publication of the award.

Issue No. (9): Demand for full acting allowance for all work in the higher post as well as night allowance, duty allowance, cash handling allowance, overtime allowance after working eight hours in factory and fields, etc.

Acting Allowance.—The demand relates to various kinds of allowances including acting allowance, night allowance, overtime allowance etc. Shri S. K. Basu on behalf of the Union urged that by 'full acting allowance' the Union demand is for the payment of full salary for the days any employee acts on the higher job on the principle 'pay for the job and not for the man'. It was argued that this principle was admitted by Company's own witness Mr. Moore Arthur (EW-9) in his statement. Reference was made to Indian Labour Gazette, June 1948, page

882 which deals with the case of Ford Motor Company of India Ltd., Bombay. In this case the Tribunal made recommendation for payment for overtime work. The authority is not in point and need not be discussed.

Shri Sen on behalf of the Company conceded that regarding monthly rated workers in the case of acting allowance the minimum pay of higher job is paid. In the case of daily rated workers excepting artisans it was also conceded that one who acts for higher job would get the minimum of that higher job; of course in case one is getting already more at lower job then he will get his own wages plus one lift of As. 0-2-0. Regarding Artisans it was contended that the demand is not reasonable inasmuch as they are divided in three grades I. II and III; but their work is of the same nature and they are sometimes linked and put together in order to finish the work and as such no question of acting allowance arises. The argument precisely was that the nature of work is the same but the wages differ on account of passing certain tests or length of service.

On the appreciation of the arguments of both sides it seems clear to me that as far monthly rated employees are concerned acting allowance is to be paid in full of course at the minimum grade salary of the higher job; but in the case of Artisans the plea and argument advanced on behalf of the Company has considerable force. It is common knowledge that in any construction or machinery Artisans are pooled together and no artisan replace one another for a number of days unlike monthly raised workers who acts in place of another for a definite period on account of leave or other cause. The finding accordingly would be that in the case of Artisans the demand is negatived while in the case of others it is allowed as described above.

Night Allowance.—The demand is for the extra payment of 25 per cent. over the usual wages for the work done between 10 P.M. and 6 A.M. Reliance was placed on Buckingham and Carnatic Mills case (Labour Law Journal—April 1951—Supplement—page 399) and Sugar Co. case (Labour Law Journal—October 1951—page 466). But a divergent view was taken in the case of Firestone Tyre and Rubber Co. (India) Ltd. (Labour Law Journal—July 1951—page 125) and Labour Appelate Tribunal also in another case between Fertilizers & Chemicals (Travancore) Ltd. *Vs.* This workmen (Labour Law Journal—August 1951 page 211) held as follows:

> "That the work in the factory is a continuous one and the shifts were rotated, no special allowance for night shifts were called for."

I am in agreement with the dictum which is also binding on this Tribunal. The demand therefore stands rejected.

Duty Allowance.—This special allowance was claimed on the plea that some of the workers who work in the workshop have to work more hours than the clerks in the office. It was argued that on account of the nature of their duties they put forth more work and they are entitled to special duty allowance. In view of the maximum period of working hours viz. 48 hours this demand is not intelligible, because duties are varied and as such are done by different persons with special knowledge of their work and when the working hours are fixed it would lead to absurdity if anyone complains that his duty is more onerous or uncongennial and as such he should have a special duty allowance. It is a different matter that his wages may be more on account of the nature of his work but to claim any special allowance does not hear serious scrutiny. The demand fails and is disallowed.

Cash handling allowance.—This demand is also a kind of special allowance for those who handle cash. The argument given above in the demand of duty allowance applies and the result naturally would be the same. The demand if accepted would mean that all Treasurers, or Cashiers who deal with cash should have a special allowance has never been asked for on this ground. The demand is rejected.

Overtime allowance.—Overtime wages are already being paid and if the demand is for any extra allowance it has no merit and must fail.

Issue No. (10).—Demand for having relieving staff.

The Union case is that additional relieving staff be kept to cope with leave contingency. It was contended that the number of days so far leave concession is concerned were increased by the prior award but no increase was made in the staff, and for want of more men sometimes the workers are handicapped in obtaining leave. Reference was made to Industrial Court Reporter. November 1950 in

which it was held that leave reserve be also maintained. Shri S. C. Sen in reply controverted the argument and maintained that leave is regulated by a roster system in the service of the Company and no handicap has ever come in. The argument was reinforced that the question moreover relates to management function and the demand is misconceived. Reference was made to a decision of the Labour Appellate Tribunal in the case of Fertilizers and Chemicals (Travancore) Ltd. (Labour Law Journal—August 1951—page 211), wherein the Tribunal held that 'it was within the competence of the management to fix the labour force required; so long as no undue strain is imposed on the employees that the strength required for the working of the factory has been estimated on the advice of the experts which has consequently to be accepted'. In the absence of any specific instance that there was any handicap and in view of the fact that it is more in the interest of the employer to see that the work in the factory should not suffer for want of men I don't think any case has been made out for calling upon the Company to employ special reserve of workers for leave contingency. Such matters are more for adjustment in day to day work and concern the management affairs than to form the subject of adjudication. The demand is without substance and is disallowed.

Issue No. (11).—Demand for regular half an hour's recess to all workers including Fireman, Engine Drivers, Pump Drivers etc. and two hours recess for all general shift workers in cold weather.

The demand was made on the basis of the provisions of Factory Act viz. that all workers are to be granted recess interval for at least half an hour. It was contended on behalf of the Union that some workers like Firemen, Engine Drivers, Pump Drivers etc. were got exempted from this provision by the Company but under the Factories Act the provincial Government has no power to grant such exemption in case of workers engaged in engine room, boiler house or attending to power plant or transmission machine from the operation of section 55 of the Factories Act. Reference was made to Chief Labour Commissioner and Conciliation Officer's reports (Exs. VV and VV/1), whereby the labour officers suggested that the matter be referred to the provincial Government. The position taken up by the Company was that half an hour's recess is granted to the workers but the same is not made at the stated period on account of the exigencies of work which are peculiar in this factory as Motor Drivers and those working in engines cannot stop at a specified time owing to the exigencies and nature of their work; otherwise recess is generally ensured for all. It was further stated that in regard to the firemen and those working on boilers the mater has already been referred to the Inspector of Boilers and the State Government. It appears that the recess period is not withheld and the timings vary according to the exigencies of work. In these circumstances I do not think that the provisions of Factories Act are being defied in any manner and the matter at any rate has been referred to the State Government. For all these reasons the demand is negatived.

Issue No. (12).—Demand for the periodical examination of the workers engaged in hazardous occupations by the Company and their treatment at the expense of the Company.

The demand of the Union is that the workers in the oil industry are open to peculiar diseases on account of the hazardous nature of occupation and that the interest of their health, periodical examination is necessary. Reference was made to Works Committee Proceedings (Ex. YY-31 and YY-32) and Conciliation Officer's report (Ex. VV-1). Shri S. K. Basu argued that YY-31 is a revealing document which shows the number of discharged workers in the year 1951 on account of their having contacted Tuberculosis. YY-32 is another statement of the Chief Medical Officer wherein various diseases peculiar to this industry have been cited. My attention was also drawn to the International Labour Office Year Book wherein diseases peculiar to oil industry have been referred to. Finally the learned Counsel claimed that the services of a specialist in T.B., in dentistry and an eye specialist be requisitioned to meet the needful. The learned Counsel for the Company refuted the allegations with reference to the last award of 1949 wherein it was observed that present measures and safeguards in regard to the hazardous nature of occupation are sufficient and that no change was required. It was also argued that T.B. cases occur as a matter of course and have no particular connection with the oil industry. The one disease mentioned in this industry is of 'Dermatitis' but there have been very few cases and all necessary precautions are taken and medical aid afforded. It was next argued that under the Factories Act if any one occupation is found dangerous it is for the Government to intervene but no such occasion has ever arisen. Reference was made in this connection to sections 65, 86, 88, 87 and 89 of the Factories Act. It was further submitted that the system of periodical examination is in force when anyone goes on leave he is examined and furthermore

free medical treatment is available to all in the hospital. Replying to the demand of an eye specialist, T.B. specialist and separate hospital of Dentistry, the Counsel submitted that much is being already spent on the hospital and the medical facilities given by the Company to its workers have always been noted with satisfaction by the officers in their reports and if further improvement is to be made it is for the management to consider.

The demand as put forward by the Union on merits has my sympathy, because to my mind employers have a duty towards the workers in alleviating their physical suffering in so far as this is due to their job in the course of employment. The difficulty however which I find lies on the technical side viz. that this type of demand is not a part of the conditions of service and as such it is more a management affair than one calling for adjudication. The necessary safeguards by way of gloves, safety belt, face masks are already provided and it is not denied by the workers that medical aid is also forthcoming. All the same I would recommend that if funds allow something should be done to checkmate the growing menace of T.B. cases and the periodical examination of workers engaged in hazardous jobs be made more regular, liberal and frequent, in as much as such provisions has valuable effect on the efficiency of work and consequent increase in production.

Issue No. (13).—Continuation of Negotiation Committees as a machinery to ensure security of service.

The grievance of the Union in this respect is that the Company have violated the terms of the joint agreement dated 1st July 1947 (Re-affirmed before the previous Tribunal on 24th September 1948) in discontinuing the Negotiating Committee already working. Reference was made to the recommendation made by the Regional Labour Commissioner and Chief Labour Commissioner for the continuation of these Negotiating Committees. The reply of the Company was that the Negotiating Committee was discontinued when a Central Works Committee was established under the Industrial Disputes Act. It was alleged *inter alia* that the existence of Central Works Committee rendered the Negotiating Committee redundant because all matters can be discussed in the Works Committee. The Company further submitted that its decision was not influenced by any spirit of unfair labour practice as alleged by the Union and moreover it is not an industrial dispute and should therefore be left outside the adjudication. Shri S. K. Basu arguing on behalf of the Union vehemently contended that the plea of the Company did not furnish any answer as to why the terms of agreement were infringed unilaterally. It was argued that the Works Committees decisions are subject to Chairman's power of veto and do not serve the purpose which the Negotiating Committee was performing. It was next urged that the purpose of the Negotiating Committee is different inasmuch as it is a machinery for bargaining which element is wanting in the Works Committee. Reference was made to the prior award wherein the existence of this negotiating machinery was approved. Reference was also made to the statement of some of the witnesses and to Ex. ZZ/5 series which constitute correspondence between the parties as well as the report of the Labour Officers Exs. VV and VV/1. The oral evidence and Ex. ZZ/5 need not be discussed which relate to the controversy as to whether the Union was also consulted before suspending the machinery of Negotiating Committee. On the perusal of correspondence, I am satisfied that the Union was not duly consulted and this plea was not raised in the written statement also. The report of the Chief Labour Commissioner in this respect is significant and may be reproduced as follows:

Ex VV—page 4:

> "The Regional Labour Commissioner has recommended that the Negotiation Committee should continue, as it was doing useful work. Under the statute a Works Committee has been constituted and is functioning under the Company. Although Negotiation Committee may be a good thing I do not see how we can force it on the company when the Company does not want it. However, I would suggest that unless the Company have got grave objections to the existence of such a committee, they may continue the Negotiation Committee because in the long run it may be of use to the Company."

It would be seen from the above extract taken from Chief Labour Commissioner's report that the usefulness of a Negotiating Committee was definitely pointed but it was observed that it could not be forced upon the Employer. Shri S. C. Sen in his argument also stressed the same plea and urged that the purpose of the Negotiating Committee can be usefully served in the Works Committee which is a legal body constituted under a Statute. And, that as both are advisory bodies it would be of no use to have more bodies than one. Reference was made to the

statement of Mr. Glover (EW-11) and the provisions of the Trade Unions Act, 1926 as amended in 1927. The argument precisely was that under the Trade Unions Act any one of the representatives can negotiate and there is no need of any Negotiating Committee in addition to the Works Committee upon which the Union has adequate representation.

On the appreciation of all the facts and circumstances connected with this demand I have noticed that the Company has sought to argue more on the legal aspect as to whether the demand amounts to industrial dispute or not and avoided to reply to the fact as to why the agreement of 1947 was broken without consulting the other side. On merits I am also not satisfied that a valuable right secured by the labour on the basis of bargaining which is a key note of the Industrial Disputes Act should have been done away with on the inauguration of the Works Committee. The proceedings of the Works Committee Ex., YY—series are placed on the record and I have gone through a good number of these with reference to various points in the course of argument and found that the final decision invariably lay with the Chairman who is a representative of the Company. I do not mean to say that the constitution of the Works Committee and their functions are faulty, what I would emphasise is that Works Committees constitute a forum for the ventilation of grievances which are deliberated upon in a joint meeting but the purpose of the Negotiating Committee stands on a much higher level. The Negotiating Committee manifestly would be one where two parties stand on equal footing and negotiates on matters in dispute across the Table on the basis of collective bargaining. The decisions of Negotiating Committee take the form of agreement and do not suffer by any power of veto and naturally prove more conducive in the promotion of harmony and good relation between the parties. On the other hand the decisions in Works Committee as revealed from the proceedings rather leave a sting behind when the view point urged by the labour is overruled or vetoed by the Chairman. It is more or less the spirit of conciliation and concord which should work both in Works Committees and Negotiating Committees but the latter has a sanction behind having been based on mutual negotiation. The point hardly requires further elaboration and I am of the definite view that the machinery of Negotiating Committee to which exception is being taken by the Company would ultimately prove more useful for fostering good relations, amity and concord. With regard to the legal objection, suffice it to say that the matter was resolved between the parties by an agreement of 1947 and it is futile to urge that the agreement was contrary to the provisions of the Industrial Disputes Act. It was more in he furtherence of the provisions of Industrial Disputes Act that a certain body was set up to negotiate over the differences relating to employment and unemployment and other allied matters of service conditions of the employee. At any rate no authority was cited on the side of the employer in support of the contention that the rescinding of an agreement arrived at before the Regional Labour Commissioner did not fall within the ambit of the definition of industrial dispute. In the result I would allow the demand and direct that the Negotiating Committee be revived within two months with effect from the date of the publication of the award.

Issue No. (14).—Demand for the payment of school fees for the children of employees studying at the local school at Tinsukia on the lines already introduced at Digboi.

The demand is two-fold: one is that the school fees of the children of the workers at Tinsukia be paid by the Company because they have no such facility as the children of the workers at Digboi enjoy. The other part is that a Hindi school be started at Digboi for the benefit of children of the workers. Shri S. K. Basu referred to the Works Committee proceedings (Ex. YY/20) where this question was posed for discussion as well as to Conciliation Officer's Report (Ex. VV/1) and the statement of WW-39. The main argument was that either a school be opened at Tinsukia or the school fees of workers be paid by the Company, and that teaching of Hindi be started at Digboi school. On behalf of the Company it was stated that at Tinsukia there is a Government school unlike that of Digboi and the necessity for a new school was not made out and so far starting of Hindi teaching at Digboi was concerned if the number of students becomes appreciable they could have no objection. At the same time it was maintained that the demand does not fall within the purview of Industrial dispute and these matters can be left to the management. The point in issue is not so important as to call for any legal exposition. But I have felt that some of the demands of the Union so far Welfare activities are concerned rather smack of legal right when such matters are posed for adjudication. Welfare activities are no doubt undertaken with a view to make the life of workers more comfortable and to enable them to come to work with satisfaction and ultimately it conduces to the well-being of the concern also but such benefits do not

form a part of service conditions and cannot be claimed as a matter of right to be enforced by adjudication through a court. A casual visitor to Digboi would not fail to see the various welfare activities of the Company regarding general sanitation, hygiene of the town, playgrounds, water supply, educational facilities etc. and I think further improvement can be more easily made by conciliatory approach than to resolve it by adjudication as to what more benefits are called for. Coming to the actual demand I am of the opinion that the same is neither based on any agreement nor forms a part of service conditions and as such the Tribunal is not competent to adjudicate upon the matter. I would only recommend to the Company that arrangement for a Hindi school be made as early as possible as teaching of Hindi within a measureable time has become essential and the large number of workers and their children be not deprived from learning it.

Issue No. (15): Abolition of contractor's labour inside factories and oil-fields.

The demand put in nutshell is that Company should not engage contract labour but only direct labour and treat the present contractors labour as Company's employees. The reasons are explained in the statement of claim at pages 71 and 72 and need not be recapitulated as the same will be considered as part of argument. Shri S. K. Basu ingeniously avoided the word 'abolition' although the same was used in the statement of claim as well as in the issue itself, which were formulated by the Union and agreed upon by the other side. His contention in this respect is that he does not ask for abolition of contractors but the demand is for direct recruitment of labour by the Company in order to bing the workers under one employer without any discrimination. Shri Basu on the basis of this argument urged that the demand as such comes within the purview of industrial dispute and the question as to whether abolition of contractors institution amounts to industrial dispute or not would not come in. Lengthy arguments were advanced in different phases and ultimately it was concluded that the demand for direct recruitment of labour is an industrial dispute although it results in the abolition of contractors institution. Reference was made to the statements of some of the witnesses who had given a picture of the distress and deprivation of the labour working under contractors. On the other hand Shri Sen joined issue straightaway on the point that the demand was more for the dismissal of the employer *viz.* contractors who are a party to the Reference and it was only camouflaging the issue that the demand was not for the abolition of the contractors institution but to call upon the Company for direct recruitment of labour. Reliance was placed on this Tribunal's decision in Thakur Mahadeo Singh case (Contractors of B.I.S.N.) (Labour Law Journal—Vol. II—1951—page 635) and the full bench decision of the Labour Appellate Tribunal in the case of United Commercial Bank. The point does not admit of any elaboration because the same has already been discussed at some length in B.I.S.N. case where I have held that the demand for the abolition of contractors is rather for the non-employment of the employer and as such was not cognizable under the Industrial Disputes Act. Suffice it to say that I still adhere to the view expressed above and I see no substance in the argument advanced by Shri S. K. Basu in which he tried to approach the question in different manner presumably having been conscious of the previous decision. The demand stands rejected.

Issue No. (16): Recruitment of more firemen, engine drivers drilling, rig-building and production gangs etc. to recoup the shortage of hands in these categories of workers.

This demand was based on the ground that the workers are already over worked and more recruitment is necessary. Reference was made to the statements of WW-8, WW-12, WW-13, WW-16, WW-18, WW-19, WW-20 and WW-21. Obviously the demand is that the strength of labour should be maintained according to the view of labour already under employment. As held by the Labour Appellate Tribunal in 'Fertilizers & Chemicals (Travancore) Ltd.' (Labour Law Journal—August 1951—page 211) it is a management function and does not admit of adjudication. I have not come across with any case where new recruitment was made on the asking of any Union, of course, the question of retrenchment stands on a different footing. The one differs materially from the other so far the management function is concerned. There is no force in the demand and the same is disallowed.

Issue No. (17): Demand for the re-employment of ex-strikers without discrimination *viz.*—

(1) Shri U. C. Bhowmik (Regd. No. 591).

(2) Shri S. M. Sen (Regd. No. 383).

(3) Shri C. R. Guha (Regd. No. 4019).

(4) Shri Rampat Ahir (Regd. No. 10374) etc.

These are four employees on whose behalf the demand was made but none of them was examined. Shri Basu in the first instance stated that there should not be any discrimination in the re-employment of ex-strikers but on the reply of Shri S. C. Sen that no such discrimination has been made and the strike had not been treated as disqualification for re-appointment, Shri Basu did not press the demand in his reply. It needs no adjudication.

Issue No. (18): Increase of House Allowance to Rs. 8 minimum.

The demand is that there has been a sharp rise in rents and with the charge of circumstance it has become necessary that increase be made in the rent up to Rs. 8 per month. In the previous award house rent was fixed up to Rs. 4 but it is alleged that the amount is not sufficient in the present state of affairs. The Company on the other hand maintained that a majority of workers are living in Company's quarters and in the case of others no evidence was adduced with regard to the increase in their rental. It was also argued that some of the employees have accommodated their near relations who have come from East Pakistan and they might require more accommodation but it is no concern of the employer to provide accommodation for them. Be that as it may, no evidence was adduced in regard to actual rise in rents at Digboi and in the absence of any reliable data I see no good reason to interfere in the amount fixed by the previous award of 1949. The demand is disallowed.

Issue No. (19): Provision of water supply and light in each quarter as well as in Bustee area.

This demand also relates to the facilities and the amenities provided by the Company to its workers. The position of the Company in this connection is that Digboi is a big town and the Company has taken upon it to provide amenities but certain technical difficulties always come in the way of even big corporations. It was submitted that all honest effort was being made for adequate supply of water and arrangement of light but it was not the concern of the Company to extend these in bustees. As observed above in similar issue, it is left to the discretion of the Company with recommendation to add to the facilities in their own sphere in order to make their workers more comfortable. The matter hardly admits of any adjudication and is left to the management.

Issue No. (20): Demand for the sale of coke and Kerosene Oil at cost price to all workers.

This is yet another grievance with regard to the supply of coke and Kerosene oil. It was submitted on behalf of the Union that Coke was first available but now the Company has withheld the concession to the deprivation and suffering of the workers. Shri Sen on behalf of the Company replied that the supply was being made at concession rate by the Company but it could not be claimed as a right. The other argument was that it does not form the condition of service and the Union was rather making a show of large number of grievances. The demand relates to a certain concession and as such as held above does not amount to industrial dispute because it is not a part of the service condition; and cannot be claimed as a matter of right. It is therefore left to the Company to consider the demand sympathetically, on the maxim 'a contented labour is an index of benevolent administration.' I am conscious in making this remark that the labour should also be reasonable in making demands but in the matter of concessions I would recommend for a more liberal policy towards the workers.

Issue No. (21): Demand for treating accident period as sickness period in the case of:—

(1) Bhumilal (Regd. No. 15809).

(2) Dalbahadur (Regd. No. 22319).

(3) Naresh Chandra (Regd. No. 18602)

(4) Jamini Kumar Das (Regd. No. 19755).

(5) Sachindra Kumar Dey (Regd. No. 27304) etc

Under this issue there are five cases in which the period of sickness was not treated as sick leave and the demand is for treating the accident period as sick leave. The particulars of the employees mentioned under this head are not given in the statement of claims. Out of the five employees four came into the witness

box and supplied the particulars in their depositions which may well be considered on their own merits:

(1) **Bhumilal (Regd. No. 15809):** He was examined as witness No. 45 and the facts put briefly are these: The employees of the Company on the occasion of Pujah festival got some corrugated tins and poles from the Company on loan and constructed a Pandal. After the Pujah was over Shri Bhumilal along with some of his neighbours living in the same lines was dismantling the Pandal in order to return the articles to the Company. In the course of pulling a pole fell upon him and his left foot was injured. It is alleged that he became unconscious and was carried to the hospital in a car and subsequently was treated as a patient in the Refinery dispensary. He was unable to attend to his duties for 17 days, and was not paid any pay for that period. His case was also considered by the Works Committee as evidenced from Ex. C.C. In cross-examination he admitted that he was a daily rated worker and was treated free by the doctors during his treatment. Now his grievance is that he received the injury by accident and the period of his absence from duty should have been treated as sick leave. The facts given above clearly indicate that he was not on Company's work when he received injury. The principle to my mind in the point involved is as to whether injury was caused as a result of a risk to which the employee was exposed in the discharge of his duty. This principle has been considered in some cases under Workmen's Compensation Act and can serve as a guide in the determination of the question involved in the case of Shri Bhumilal. The Pandal was constructed for celebrating the festival near the living quarters and the removal of the Pandal was by no stretch of imagination the work of the Company or a part of duty as an employee of the Company. The applicant is daily rated worker and if any leave was due to him under the leave rules he could have availed it. But to ask as a general measure that any accident period be treated as sick leave amounts to claim compensation or leave concession on account of any injury incurred in private life. I see no justification whatsoever for any such principle to be laid down. The result is that this claim is disallowed.

(2) **Dilbahadur (Regd. No. 22319):** His case is that he was sleeping in his quarters on the night of 6-11-49 when he went out to answer the call of nature. It so happened that he fell into the drain and sustained injury on the left shoulder joint. Next morning he went to the hospital and after examination he was admitted and remained as an indoor patient for 3 days. Subsequently he was treated as an out-door patient up-till 3-12-49 when he joined his duty. He was however not paid for the period of sickness and his claim is that the period specified above be treated as sick leave. The facts given above reveal that he met with an accident while at home and at a time when he was not on duty for the Company. The principle involved has already been discussed in the case of Bhumilal and the same applies in this case, with the result that the claim is disallowed.

(3) **Naresh Chandra Pal (Regd. No. 18602):** He was examined as witness No. 47 and deposed that in August 1949 one day when he had returned home from duty he went to the water tap in the Company's line to fetch water. He was holding a bucket in his hand when he slipped and fell on the pucca floor, near the tap and sustained injury on his right hand. He was admitted in the hopital and on examination fracture was found in the fore-arm for which he was detained for 15 days as an indoor patient and thereafter attended the outdoor dispensary for 52 days as outdoor patient. When he resumed duty he was told by the Supervisor that he would not get any pay for the period of his sickness. It was further stated that his case was taken up in the Works Committee as evidenced from Ex. EE. but to no avail. In cross-examination the applicant admitted that he was getting free diet when he was in the hospital and that he was a daily rated worker. This incident as borne out from the facts also occurred when the employee was not on duty and had gone to fetch water in his private capacity. The accident did not arise out of the employment and as such no case was made out for treating the period as sick leave if the same was not available under leave rules. The claim fails and is disallowed.

(4) **Jamini Kumar Das (Regd. No. 19755):** He did not make his appearance and was not examined in the course of proceedings. The claim was not pressed for want of particulars and requires no consideration.

(5) **Sachindra Kumar Dey (Regd. No. 27304):** This man is also a daily rated worker and his case is that in September 1949 when he was proceeding from his house at No. 1 Golai in the Bustee to the place of his duty before 6 A.M. he slipped down while crossing a Nullah over the pipes which were found slippery on account of mud and rain. This accident resulted in the fracture of his left

hand. He was taken to the hospital by his friends where he was admitted and could not attend his duties for 25 days. His grievance is that the period of accident be treated as sick leave. In the Cross-examination Shri Dey admitted that the drain was at a distance of half a mile from his house and he usually passes this Nullah every day.

In this case, the distinguishing feature only is that Shri Dey was going on duty when he met with an accident described above. He was however not exactly on duty or exposed to any risk in the course of his duty. The position of the Nullah or the pipes again were not faulty on account of the laying of the pipes by the Company but on account of rain and consequent mud. In these circumstances there is no justification to hold the Company responsible for the accident and the distinguishing feature said above is of no avail. The result is the claim fails and is disallowed.

Issue No (22): Demand for the reinstatement of:—

(1) Sarathi (Regd. No. 15942).
(2) Aminor Rahaman (Regd. No. 17419).
(3) Abdul Rashid (Regd. No. 25539).
(4) Kandarpa Ram Kalita (Regd. No. 14880)
(5) Padampani (Regd. No. 27115).
(6) Tikaram (Regd. No. 26523).
(7) Sudhanya (Regd. No. 25517).
(8) W. Bannett (Regd. No. 20605).
(9) Miss Rumnong (Nurse).
(10) Abdul Mazid (Regd. No. 2595).
(11) Rakhal Chandra (Regd. No. 25619).
(12) N. C. Mazumdar (Regd. No. 26446) and others.

This issue deals with one dozen employees. The Union out of these 12 persons pressed the claim of eight persons only who were examined as (1) WW-53 (W. Bennett), (2) WW-54 (Sadananda Dey), (3) WW-55 (N. C. Mazumdar), (4) WW-56 (Aminur Rahaman), (5) WW-57 (Bibhuti Ranjan Dey), (6) WW-61 (Musai Singh), (7) WW-62 (Kaladhar Joisi) and (8) WW-63 (Sethai Chowdhury). Of these again WW-54 (Sadananda Dey), WW-57 (Bibhuti Ranjan Dey), WW-67 (Musai Singh) and WW-62 (Kaladhar Joisi) were not specifically mentioned in the issue but as the word 'others' was added in the issue their cases were also heard. On the other hand Abdul Rashid, Kandarpa Ram Kalita, Padampani, Tikka Ram, Sudhanya, Miss Rumnong, Abdul Majid and Rakhal Chandra, eight persons whose names are given under issue No. (22) did not come into the witness box to give the particulars of their cases and for want of that their cases were not pressed.

Consequently, only eight cases four from 'others' and four from those mentioned in the issue are to be considered on their particular merits:

(1) **Sethai Chowdhury (Regd. No. 15942).**—He was examined as witness No. 63 and deposed that he was discharged from service on 29th November 1949 on the charge that he had allowed unauthorised lorry helper to operate in contravention of the provisions of the Standing Order. What actually happened was that Shri Chowdhury had gone to Kharjan well where he asked the Jugalis to load the lorry and he himself went to a smoking hut. In his absence one of the helpers started the lorry and when he heard the sound he ran to the spot and stopped the helper but the Transport Superintendent soon turned up and called upon him to present himself on the same day to the office and although he explained the whole position yet he was discharged from service. An appeal was preferred to Labour Superintendent but to no avail. In cross examination he admitted that he was the licensed driver for the lorry in question and had two warnings one in July 1948 and the other in February 1949 at his back. The facts as stated above are quite simple and it was not denied that the helpers were with the driver in order to help him in loading and unloading. This is also not denied that Shri Chowdhury was in the smoking hut at some distance and in his absence the helper started the lorry. It goes without saying that the act of the helper had no connection with the driver. In all probability it appears that when the lorry was being loaded the helper wanted to move it from one place to the other in order to facilitate the work of loading. It is not the case of the Company that the helper actually moved out of the premises. It is just possible that the helper started

the engine and even the vehicle might not have moved at all. In these circumstances it is highly technical to say that the licensed driver was at fault in allowing any one to start the lorry who had no licence. The helper moreover is in the employment of the Company and if he acted indiscreetly or against rules it was he who should have been called upon to explain. His case was also pressed before the Conciliation Officer; and as the facts do not amount to the committal of any offence on the part of Shri Chowdhury his claim must succeed. In the result I would direct that Shri Chowdhury be taken back in service. As the case is old and no prayer for compensation was made, the same is not considered.

(2) **Aminur Rahaman (Regd. No. 17419).**—His case is that he was working as a Fireman and was suspended from work on 7th June 1950 on the alleged charge that he had allowed the water level in the boiler to go down with consequent loss to the boiler. His explanation is that he had gone to attend a call of nature after having seen the water at about 3/4th of the glass full. It was also alleged that there was a leak in the blow down in the boiler which had been reported to the Tindal earlier. His case was discussed in the Works Committee meeting as borne out from the Proceedings (Ex. NN/1), but to no avail and he was discharged from service. Moulvi Rahaman admitted in cross-examination that his statement was recorded by the officer in the presence of Moulvi Ahmad, Joint Secretary of the Labour Union and he had signed the statement. The evidence recorded in the course of enquiry (Exs. 15 and 15/A) brought on the record goes against him and Mr. Edmundson *Employer's Witness also* refuted the allegations of leakage etc. made by Moulvi Rahaman. On the appreciation of the evidence I do not see any good reason to interfere and the claim is disallowed.

(3) **W. Bennett (Regd. No. 20605).**—He was examined as witness No. 53 and his deposition discloses that he was a tank gauger in section 4 of Production Department when he was discharged from service on 28th January 1949. The charge against him was that he had removed the instrument and went to sleep in the boiler battery. His case was discussed in the Works Committee meeting as borne out from copy of Proceedings (Ex. KK) and it was urged on his behalf by the Employees Representative that Mr. Bennett was feeling unwell with cold and as no shelter had been provided by the Department it was natural that the man should seek shelter against the rain and cold at the boiler battery. It was admitted that tell-tale recorder was removed to save it from the rain. The plea manifestly is of no merit for avoiding duty. His case has also been considered in the Works Committee as well as on appeal by the General Manager and I see no justification for interference. The claim fails and is disallowed.

(4) **N. C. Mazumdar (Regd. No. 26466).**—He was examined as his own witness No. 55. He deposed that he was an admission clerk in Assam Oil Company hospital and was discharged on 20th September 1950 by an order Ex.MM. The charge against him in the first instance was that in the course of his night duty he was found asleep. This charge sheet (Ex. MM/1) bore the time of incident as 1-50 A.M. On his objection 2 A.M. in place of 1-50 A.M. was inserted on 5th September 1950 by the Registrar. Subsequently he had made a representation to the General Manager (Ex. MM/3) wherein he had explained the whole position. The material facts gathered from the documentary evidence (Ex. MM series) as well as from the statement of Shri Mazumdar and Sister Dampsey, who was examined in rebuttal by the Company be shortly stated as follows:

Shri Mazumdar was charged in the first instance that he was found fast asleep at 1-50 A.M. on 3rd September 1950. On the filing of written explanation by Shri Mazumdar the timing 1-50 A.M. was changed to 2 A.M. under the signature of Shri S. R. Sen Gupta on 5th September 1950. After due enquiry he was given a warning but the same was withdrawn by letter dated 18th September 1950 (Ex. MM/5), which is reproduced for facility of reference:

Ex. MM/5: "ASSAM OIL COMPANY LIMITED.

D/O LO. 16/61-G, Assam 18th September 1950.

Sjt. N. C. Mazumdar
Regd. No. 26446

(Through C.M.O.)
Dear Sir,

We refer to the appeal made against the warning given to you for being asleep on duty on 3rd September 1950. and would advise you that due to a technicality this warning is being withdrawn.

You have, however, committed a very serious offence in that you have made a false charge against Sister Dempsey that she was intoxicated when she visited the hospital on the morning of 3rd September 1950. This is an act subversive of discipline warranting dismissal, and unless you can give us acceptable reasons to the contrary by 20th September 1950, we shall have no option but to dismiss you.

Yours faithfully,
ASSAM OIL COMPANY,

Sd. A. W. SCOTT,
For General Manager."

Now Shri Mazumdar in his written explanation had stated that Sister Dampsey when she came in the hospital at 2 A.M. and accused him of having gone fast asleep was drunk; he was thereupon called upon to explain as to why he had made a false charge against Sister Dampsey. Shri Mazumdar persisted in his allegation against Sister Dampsey. He not only stated this before the Chief Medical Officer but in his further explanation dated 20th September 1950 Ex. MM/3 he repeated the charge. In view of the significance which is attached with this document the same is reproduced as below:

Ex. MM/3: "To

The General Manager,
Assam Oil Company Limited,
Digboi.

Sir,

Ref. Your letter No. D/O.2.0.16/61/G, of 18-9-50.

I beg to state that when Sister Dampsey pocked me from behind I got frightened and when she charged me for sleeping I was astonished, and standing on my legs I replied that I was not sleeping at all, and I tried my best to make her understand that a few minutes ago I sent the ambulance and also spoke to dhobi, and in support of my saying I tried to put the record books regarding timing before her to prove that I was not sleeping only I was leaning on the chair, and she used to speak in such a mood that a person cannot do so in placid state of mind. Again and again I explained her the position very politely but she did not mind it at all, her reply was "you are sleeping." However when she spoke to me the smell of wine came out of her mouth, she could not even stand of her legs properly.

When C.M.O. called for Sister's report I told him everything clearly as C.M.O. is my authority he should hear everything and this was not my countercharge, I only explained the situation.

Yours obediently,
SD: N. C. Mazumdar
Regd. No. 26446

Dated, Digboi
The 20th Sept 1950.

Copy to A.O.C. Labour Union"

The matter was also posed for discussion before the Works Committee meeting held on 29-9-50 (Ex. MM/4) where Maulvi U. Ahmad on behalf of the Union represented Shri Mazumder but the Chairman held that the accusation against sister Dampsy was so scurrilous that even if taken to Court it would almost certainly lead to a charge of defamation with very serious consequences to those concerned and refused to consider the question of reinstatement of Shri Mazumdar.

Now in the course of argument Shri S. K. Basu explained at some length that Shri Mazumdar was not asleep when Sister Dampsy visited the hospital at 2 A.M. Reference was made to the noting by Shri Mazumdar on that night of the various jobs which he performed and made a record of that of which a copy Ex. MM/2 was placed on the record. This exhibit indicates that he had sent ambulance at 10-40 P.M. for the first time and at 3-15 A.M. the last time in the night; and that ambulance arrived at 11-2 P.M. at the first time and 3-45 A.M. for the last time. At No. 5 in MM/2 it is noted that ambulance was sent at 1-50 A.M. The argument built upon this record was that in the charge sheet the time given was 1-50 but subsequently it was changed to 2 A.M. in order to counteract this note because he could not go to sleep at 1-50; and two days after the time was changed to 2 A.M. It may be granted for the sake of argument that either the time was given wrongly or that at 1-50 he was not asleep, but it does not stand to reason that Sister Dampsy

should have poked him if he was all awake and sitting with open eyes. Be that as it may, this part of the story has no significance with the present charge which resulted in dismissal viz. that he falsely charged Miss Dampsy of drunkardness. The first charge that Shri Mazumder was found asleep was withdrawn as said above and indicated by Ex. MM/5. It might have been withdrawn on account of the technical defect or otherwise but the punishment again was one of warning only and no serious or drastic action was taken on that account. It was the persistent accusation made by Shri Mazumder against Miss Dampsy which elicited the second charge and he was called upon to explain. This time in his explanation of 20th September he persisted in the charge and stated in so many words that when she spoke to me the smell of wine came out of her mouth and she could not stand on her legs properly (vide MM/3). On the other hand Sister Dampsy who chose to come into the witness box and subjected herself to cross-examination, categorically denied that she had taken any wine on that night and that she had occasion to go to the hospital on 3rd, September 1950 between 1-30 and 2 A.M. because she had received reports from patients that some people go to sleep when on duty. By people she ment hospital staff. She deposed further as to how she went to the Admission Clerk's Room Shri N. C. Mazumdar lying in the chair and his feet on the stool. This part of the statement as said above has no significance with the present charge but what she stated about the accusation levelled against her was that she had not taken drink on that night, and that she never take drink when she is on call and on that particular day she was in sole charge because sister was away on home leave. Miss Dampsy as stated by her has been in the service of the Company for the last five years in the hospital, as matron.

Now on the appriciation of the whole evidence documentary as well as oral the question boils down to this as to whether the charge levelled against Miss Dampsy by Shri Mazumdar was correct and can be treated as a statement of fact. I am not called upon to go into the question on the lines of a defamation case under the Criminal Procedure Code or even as a Civil Court; but what appears to me on the appraisement of the whole evidence is that Shri Mazumder in meeting the first charge against him (that he was found asleep) went unnecessarily out of the way to make a counter charge against Miss Dampsy, who visited the hospital and found him asleep. It is a different matter as to whether he had only shut his eyes for a few minutes but it was sufficient for him to take the stand on the performance of his duty as indicated by Ex. MM/2 and it was highly improper to make a counter charge that Miss Dampsy who in performance of her duty made a surprise visit was at fault. He was given an opportunity to explain the new charge as the first had already been withdrawn but he obdurately persisted in sticking to it and repeated his accusation. It was argued on his behalf that he was not given full opportunity; but the exhibits referred to above amply show that he had enough opportunity if he wanted to say anything more. In these circumstances and more especially when his case has already been considered by the Works Committee and in appeal I see no adequate grounds for intereference and the claim is rejected.

(5) Sadanando Dey (Regd. No. 25517):—The next case is of Shri Sadanando Dey who was examined as witness No. 54. He was working as a production Tank-gauger and was discharged on account of having gone to sleep on duty. He went to appeal against the order of discharge and his case was also taken up by the Works Committee but to no avail. The learned Counsel of the Company referred me to a decision of the Labour Appellate Tribunal in which it was held that durwan whose duty was to guard at night was found asleep and the punishment of dismissal was upheld. The citation is not available at present but otherwise also I see no good reason to interfere in a case which was decided long ago and has been through the Works Committee as well as in appeal. The claim fails and is disallowed.

(6) Bibhuti Ranjan Dey (Regd. No. 23851):—Shri Dey was a Chaprassi in the Central Office at Tinsukhia. He had two wornings before this at his back. He was given some papers for delivery to other Departments but he left the papers and thereby disobeyed the orders. He was charged for insubordination. His explanation is that he accepted the papers for delivery even when his duty hours were over but brought it to the notice of the Despatch clerk that as they were not paid overtime for working outside duty hours, it was not his duty. The copy of the charge sheet was not brought on the record and it is not clear as to what was the nature of the charge. Ex.00 however discloses that in the course of enquiry he asked for examining certain witnesses in defence. The record does not reveal as to whether he was given that opportunity to lead his defence. He also stated in his deposition that he was discharged on the same day viz. 8th, May 1950 and that he had filed an appeal to the Labour Superintendent but he did not receive

any reply to that. The procedure adopted in this case appears to be highly irregular and runs counter to the basic principles of natural justice. I would therefore allow his claim and set aside the order of discharge. My direction however to the Company is to hold enquiry once again giving him full opportunity of leading his defence and submitting his explanation and to arrive at a fresh decision.

(7) **Musai Singh (Regd. No. 20922)**:—He was a Durwan in the service of the Company and was discharged on 25th, September 1950 for having refused the order of his superior officer as borne out from Exs. SS and SS/1. In his deposition he has explained that he refused to obey inasmuch as he had finished his duty from 10 A.M. to 2 P.M. on 25th, September 1950 and his next duty was to begin from 10 P.M. to 2 A.M. but he was asked to proceed on duty by Tuzammal Khan Naik at about 7 P.M. when he was going to prepare his food. He asked the Naik to send Subh-Narain Singh but he was found unwell at that time and the Naik insisted that he should go. Next morning he was summoned before Mr. Wilson, General Manager, Tinsukhia and he was asked to explain. The charge levelled against him was that 'he was asleep on duty.' He explained the whole position but he was given a red letter and was discharged.

Now Ex. SS/1 the charge sheet relates to two incidents—one refusing the definite order and the other that he was found lying asleep, and the enquiry was made by Mr Brown and he was summarily discharged. I need hardly say that I have been sloth in interfering in the cases of insubordination in several previous cases and in the absence of any lacuna in the enquiry or disregard of basic principles of natural justice I see no good reason for interference. The result is that the claim fails and is disallowed.

(8) **Kaladhar Joisi (Regd. No. 12867)**:—He was a Chowkidar in the school at Tinsukhia when he was discharged, on 12th, March 1950 on the ground that he was suffering from T.B. The charge sheet was not placed on the record on behalf of the Company and the Union produced the letter of discharge Ex. TT whereby he was also called upon to vacate his quarters within three days of notice. Shri Kaldhar Joisy came into the witness box and deposed that he was suffering from cold and was taking medicine. He was asked to go to Digboi hospital and on going there he was asked to go to Labour Office where he was told that he had been discharged from service. The authorities called upon him to get his pay settled but he refused and enquired as to why he was discharged. No definite reply was given to him. He went to Government hospital at Dibrugarh for treatment and obtained a certificate from the Medical Officer (Ex. TT/1) Shri Basu also produced the X Ray examination plate and on the strength of the certificate Ex. TT/1 maintained that the employee was in good health and fit to carry out the duties and the order of discharge was untenable. The learned Counsel for the Company in reply argued that he was a Chowkidar in the school and as he was suspected of T.B. it was deemed proper to discharge him from service in the interest of the children.

In the light of the Medical Certificate that the man is in good health this argument is devoid of any substance. He is moreover a Chowkidar and has not to mix with the children and if he happened to catch bad cold or was suffering from some one disease he should have been granted long leave to take rest but to terminate his services on certain suspicion was wholly uncalled for. The merit of the case are strong enough for the purpose of directing the Employer to take him back in service and I hold accordingly.

Issue No. (23): Demand for setting aside the order of warning given to the workers mentioned in item 23 of the Charter of Demands *viz.*—

(1) Parasuram (Regd. No. 8151)
(2) Abdus Salam (Regd. No. 23309)
(3) Suresh Chandra (Regd. No. 27401)
(4) Dibakar (Regd. No. 13169)
(5) Pataiah (Regd. No. 28789)
(6) Jagannath (Regd. No. 28785)
(7) A. Hussain (Regd. No. 23940)
(8) Md. Ali (Regd. No. 16032)
(9) Dukhi Ahir (Regd. No. 9754)
(10) Chinaya (Regd. No. 14427)
(11) Kurmaiya (Regd. No. 29015)

(12) Jagdeb (Regd. No. 22202)
(13) Dandasi (Regd. No. 14456)
(14) Jit Bahadur (Regd. No. 21269)
(15) Bralah (Regd. No. 22722)
(16) Kabilash (Regd. No. 18626)
(17) Sher Bahadur (Regd. No. 17794)
(18) Bal Bahadur (Regd. No. 22746)
(19) Gouri Sirkay (Regd. No. 26056)
(20) Uzir Sonar (Regd. No. 13380) and others.

Under this demand there are 20 cases in which warning was given to the workers on different occasions. In some cases the worning was given some two years back and in others more than that. Mr. Basu although referred only to those specific cases in which cause of action arose after February 1949, the date of the prior award, yet examined some of the employees who felt aggrieved. These are WW-48, WW-49, WW-51, WW-52, WW-58, WW-59 and WW-60: The main argument advanced was that as previous warning is treated as an aggravating circumstance, the Union has taken up their cases because the warning was not justifiably given. Shri Sen in reply however maintained that in all these cases warnings have gone beyond two years and under the provisions of Standing Order XIV sub-clause (e) and (f) two years warnings are expunged *ipso facto* and as such they cannot be treated as previous punishment. This clinches the point involved inasmuch as the punishment of warning has become obsolete and has no practical use. Shri Basu in his reply consequently did not press on the assumption that these warnings will not be treated as previous punishment against these persons. Shri Sen repeated the position in agreement with the result that these cases require no adjudication.

Issue No. (24) : Demand for the promotion of :

(1) Surendra Kumar Nath (Regd. No. 18190)
(2) Nandolal Talukdar (Regd. No. 12230)
(3) Dimbeswar Bor Borah (Regd. No. 1245)
(4) Karamali (Regd. No. 16516)

which was unjustifiably withheld.

The demand under this issue been made on behalf of four persons *viz.* (1) Surendra Kumar Nath, (2) Nandolal Talukdar, (3) Dimbeshwar Bor Bora and (4) Karam Ali, who felt aggrieved in the withholding of promotion to them. Shri Basu did not press the cases of Nos. (1), (3) and (4) and stated that the same are withdrawn as the promotions have already been given. The case of Nandolal Talukdar (Regd. No. 13230) however was pressed and reference was made to Ex. AA and the statement of WW-43. It was argued that promotion was withheld unjustifiably in his case. Shri S. C. Sen resisted on the plea that promotion is a management function and rests at the discretion of the employer. In the light of the Labour Appellate Tribunal decision in the case of Electric Supply Company case (Labour Law Journal—Vol II—page 456—1951) 'that in the matter of promotion it is the management and management alone which is to decide the matter' as well as in view of the finding given in issue No. (4) relating to promotion the claim of Nandolal fails on this short ground and is disallowed.

Issue No. (25): Demand for setting aside the order of reduction of pay in the cases of:

(1) Damar Singh (Regd. No. 12331).

and

(2) Mohan Senapati. (Regd. No. 21141).

This demand relates to two persons *viz.* Damar Singh and Mohan Senapati. The demand was not pressed, and shall be deemed to have been withdrawn.

Issue No. (26). Classification of jobs of the workers dealing with the work of drilling, rig building, production etc. as well as for the removal of grievances of Chart Calculators of Production and Midwives.

This issue has already been decided along with Issue Nos. (1) and (31) above.

Issue No. (27) : Demand for the payment of wages of A. Bora Gohain (Regd. No. 25319) for the leave period.

Shri Bora Gohain was examined as his own witness (WW-44) and his grievance as disclosed from his statement is that he applied for one week's casual leave on 19th April. 1950 with effect from 24th April, 1950 to 29th April, 1950, and although he was told by the Supervising Headmaster verbally that he could proceed on leave; yet on return from leave he learnt that his leave was not granted. He further deposed that it was not a fact that he was asked by Syed A. Hussain, Headmaster and the Supervising Headmaster also not to proceed on leave as his leave application was not granted and that he stated that he would go no matter whether leave was granted or not. Shri Basu argued mostly on the facts given above and contended that the Supervising Headmaster was not produced by the Company and the evidence of Mr. Hussain, the Headmaster, was not reliable.

The Company examined Mr. Hussain and produced the original application (Ex. 10) and their Counsel referred to the orders passed on the applications Exts. 10/A and 10/B.

Now Ex. 10 is the original application dated 19th April, 1950. The note Ex. 10/A upon it under the signature of S. Paul reads as follows:

"If two teachers go on leave from the same school, it would be difficult to manage. He can go after next week to settle it.

(Sd.) S. Pal.
21/4"

The other note Ex. 21/B reads as under:
"Not granted may go after Mrs. Gupta returns."

(Sd.) S. Pal.
22/4"

The dates on the application are significant and clearly indicate that decision was made before Shri Borgohin left for his village i.e. on the 23rd April, according to his own statement. Now it requires good deal of credulity to believe that the teacher who was working in the school had no information on 21st and 22nd that his leave was not granted. It appears that he wanted to go and as put to him in cross-examination he left with the remark that he would go no matter leave was granted or not. Shri Basu in his arguments made it a grievance that the Supervising Headmaster, was not examined by the Company. But it was the employee's case that he was told verbally by the Supervising Headmaster to proceed on leave and it was more for him to summon the witness than to expect the other side to bring him into the witness box. The immediate officer *viz.* Mr. Hussain was examined and stated that he had forwarded the application to the Supervising Headmaster. The application also shows that it was forwarded on 21st April, 1950. The orders passed Exs. 10/A and 10/B purports to have been signed by S. Pal, the Supervising Headmaster and it is too much to imagine that these orders were not passed on the date given underneath. In the matter of Casual Leave the emergency no doubt is to be considered but I don't think that the employee had a right to proceed on leave when the orders were passed earlier and leave was not actually granted. There is no substance in the claim and the same is rejected.

Issue No. (28): Miscellaneous demands regarding the violation of tripartite agreement and gentlemen's agreement regarding joint enquiry as well as increase in the monthly-rated Mohammedan bachelor quarters and family quarters of all categories.

This issue relates to certain grievances about the violation of previous agreement whereby Welfare Committees were formed and for the reconstitution of the Welfare Committees as well as for an increase in the number of family quarters and bachelor quarters for all categories. The demand obviously relates to matters about welfare institutions and activities connected therewith which the Company have sponsored in the general interest of the workers. The Company's reply to this demand was that the maintenance of Welfare Committee is neither a term of employment nor condition of labour. It was further submitted that as Works Committees have been set up under the Industrial Disputes Act, the continuance of Welfare Committee was not deemed necessary. On merits it was submitted that the Company on the practical experience gained in a year's time about the utility of these Committees and sub-committees came to the conclusion that they had not developed on lines intended and could not serve any useful

purpose. It was also urged that Union was apprised by letter dated 8th September, 1949, that the Welfare Committees were disbanded, and that the question of violation of agreement does not arise.

In view of my finding for the revival of Negotiation Committees and in face of the existing Works Committees I feel inclined to agree with the position taken up by the Company. The other reason against the demand is that Welfare activities are not exactly a part of the service conditions and the Company has taken upon themselves to start Welfare institutions in the interest of workers and it would be going beyond the scope of collective bargaining if the consulation of workers in such matters be regulated by adjudication.

With regard to the increase in bachelors quarters etc. the matter also relates to management function and I am not prepared to interfere in these matters, which can be safely left to the good sense of the employer.

There is yet another demand under this heading *viz.* one of joint enquiry. The demand precisely appears to be that in cases of dismissal and awarding punishments under the Standing Orders, there should be a joint enquiry by a Committee constituted both of management and representatives of labour. The demand appears to be a limit to the ambition of the labour and amounts to a jury system to be introduced in departmental enquiry in private sector. I see no merit in the demand and the same is disallowed.

One or two more demands under paragraph (28) were made in the statement of claim but they were not put in the issue. These are for an ambulance for Tinsukia and transfer advice to be sent as per former practice. Such matters obviously relate to management function and do not admit of any adjudication. Forum for these can be made in the Works Committee or Negotiation Committee.

Issue No. (29): General demand that no workers should be discharged from service during the course of court trial.

A demand was made under this issue that no worker should be dismissed or discharged during trial in any court. The Company opposed the demand and maintained that Standing Orders empower the Company to take disciplinary action against workmen for misconduct; and the pendency of a case in any court should not act as a bar in normal functioning of the Standing Order. It is well known that trials in regular courts take considerable time and in case an employee forfeits the confidence of the employer by committing a certain offence it would be indeed hard to allow the employee to continue in service and the demand as such does not appear to be reasonable. It furthermore calculates to defeat the normal observance of Standing Orders and in all probability undermine discipline which is so very essential in such industrial concerns. It is a different matter that if the delinquent in court trial secures acquittal his case may be reviewed for taking him back in service or for any reasonable action commensurate with the exigencies of service but to lay down a principle that no one should be touched during the court trial by the employer as sought in the demand would amount to an undue encroachment on the rights of the employer and the demand bears no serious scrutiny. The same is disallowed.

Issue No. (30): Grievance regarding the non-implementation of the terms of the previous award and demand for the payment of arrear dues with retrospective effect. (This was objected by Shri S. C. Sen, the learned Council for the Company.)

This issue was objected by Shri S. C. Sen, the learned Counsel of the Company at the time of formulation of issues. The demand of the Union is that the terms of the previous award of Mr. Justice Varma were not duly implemented in some respects with the result that the workers suffered considerable loss in the payment of arrear dues which should have been paid to them in case the terms were duly implemented. It was claimed that arrear dues be paid with retrospective effect. Several charts and tables showing losses on account of the non-maintenance of ration shop and other losses incurred on account of the non-implementation of the award were brought on the record and good deal of time was spent at the time of argument also in pressing this demand Shri Sen on behalf of the Company resisted the claim and contended forcefully that in the first place it was wrong that the terms were not implemented but even if there was any divergence of views on the interpretation of the terms of the award this Tribunal is not competent to adjudicate upon that matter. The remedy has been provided under the Act and the Union could have resorted to that by approaching the appropriate Government. Reference was made to section 20 of Industrial Disputes (Appellate Tribunal) Act 1950 and also Sections 29 and 23 of the Industrial Disputes Act of

1947. Section 20 of Industrial Disputes (Appellate Tribunal) Act, 1950 reads as follows:

"20. *Recovery of money due from an employer under an award or decision*—

(1) All money due from an employer under any award or decision of an industrial tribunal may be recovered as arrears of land revenue or as a public demand by the appropriate Government on an application made to it by the person entitled to the money under that award or decision.

(2) Where any workman is entitled to receive from the employer any benefit under an award or decision of an industrial tribunal which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to the rules made under this Act, be determined by the industrial tribunal, and the amount so determined may be recovered as provided for in sub-section (1).

(3) For the purpose of computing the money value of a benefit, the industrial tribunal may, if it so thinks fit, appoint a commissioner, who shall, after taking such evidence as may be necessary submit a report to the industrial tribunal and the said tribunal shall determine the amount after considering the report of the commissioner and other circumstances of the case."

The legal objection has good deal of force and besides that it is significant to note that Shri Basu on behalf of the Union in reply to the preliminary objection initially stated that this is a new Refenence and the prior award is to be referred as a piece of evidence. In view of this position and more especially when all the demands formed the subject of discussion before the Chief Labour Commissioner and Conciliation Officer afresh as borne out from their reports Exs. VV and VV/1 it would amount to approbating and reprobating at the same time. This reference as discussed in the preliminary discussion is a fresh Reference and decisions are to be made on the endence now adduced and as such this Tribunal has no authority to sit on judgment of the previous award which has figured no doubt prominently in the appreciation of evidence but not for giving effect to the terms of the previous award. I have, therefore, no hesitation in coming to the conclusion that this Tribunal is not competent to consider the question of non-implementation of the terms of the previous award or to take cognizance of alleged losses, sustained by the labour. The demand is negatived and stands rejected.

The above relates to the dispute between 'Assam Oil Company and the Assam Oil Company Labour Union,' but the reference as stated in the beginning also relates to a dispute between the registered contractors of Assam Oil Company and their workmen, hence their case shall be considered in continuity and will form Part II of the award.

Issue No. (31).—Classification of all categories of workmen and fitting them in their respective scales and grades of pay.

This issue has already been decided along with Issue Nos. (1) and (26) above.

PART II

(Assam Oil Company Contractors Association Vs. Assam Oil Company Contractors Labour Union.)

The claim was filed by Assam Oil Company Contractors Labour Union, who will be termed 'CLU' henceforward for facility of reference, on the line of points of dispute between Assam Oil Company and their Labour Union. The history of their dispute given at page 3 of the statement of claim put briefly is that this labour has been working side by side with other employees of the Company in factory and oil-field since long but they have all along been deprived from the advantages of leave with pay, Provident Fund, Gratuity and other service benefits as enjoyed by the direct employees of the Company. And that the prolonged negotiations initiated on the mediation of the Regional Labour Commissioner have also proved futile. It was also stated that the first Tribunal could not deal with their grievances directly as the contractors and their Labour Union were not made party to the dispute but only recommended that contractors labour should get wages on the basis which the Company pays to their employees. The Company accordingly raised their minimum wages from As. -/12/- to Re. 1/2/6 and Dearness Allowance to Re. 1/7/6 per day but discontinued the ration supply of Rice and Atta. The Charter of Demand in their case is also dated 9th November, 1950, and the main demands are embodied in the issues a copy of which has already been reproduced in the beginning.

Now before coming to the issues it may be pointed out that the facts set forth in the statement of claim of CLU and the written statement of the contractors need not be summarised here as the same will be discussed while dealing with the issue itself.

Issue No. (1).—Grant of permanent status to

(a) Workmen with more than six months' service.

(b) Status of "Temporary" or "Casual" workmen for others.

The grievance under this demand is that the workers in the employment of contractors although have been working for years together have not yet been given the permanent status by the contractors. It was claimed that the workers who are more than six months in service be treated as permanent and the status of temporary and casual workmen be also defined. Shri S. K. Basu on behalf of CLU submitted that under Standing Order (2) 12 months are laid down for permanence but Model Standing Orders issued by Government prescribe six months only. It was argued that workers in the employment of Assam Oil Company Contractors have been working for decades but have no status nor any privileges of permanent workers are granted to them. The learned Counsel suggested six months period for permanence on the lines of Government Standing Orders. Coming to the temporary workers reference was made to the definition given under Model Standing Orders which reads as follows:

> "A temporary workman is a workman who has been engaged for work which is of an essentially temporary nature likely to be finished within a limited period.
>
> A Casual worker is a workman whose employment is of casual nature."

The definition of parmanent workman is also given under these Model Standing Orders and this is also re-produced to appreciate the distinction:

> "A permanent workman is a workman who has been engaged on a permanent basis and includes any person who has satisfactorily completed a period of three years in the same or other occupation in the industrial establishment."

On these premises it was urged that the workmen in the employment of contractors be treated permanent or temporary in the light of the above definitions laid down in Model Standing Orders. On merits reference was made to Ex. AAA—35 a list of workmen showing the length of service of workers in the employment of Shri Chakraborty, contractor. It was pointed out that the examination of this list would show that the number of workers is about 103 and the length of service in their case ranges from 6 months to 10 years. Similarly, in the case of Messrs Hawkins, Contractors, Ex. AAA/36 gives the number of workers as 36 and the length of service ranging from 3 months to 20 years. In the case of Messrs. B. N. Singh, Ex. AAA/37 indicates the number to be 106 and the length of service from 6 months to 12 years. Ex. AAA/38 relates to Lalitraj Thakurai and the number of workers is 228 and the length of service ranges from 6 months to 21 years. Ex. AAA/58 represents the workers of Messrs Mohan Singh Contractor and the number indicated is 111 and the length of service ranges from 3 months to 20 years. In the case of other contractors viz., Shri Das, Batra and Abdul mentioned in Ex. AAA/38 the number of workers is 20, 8 and 4 respectively, and the length of service ranges from 4 months to 18 years and 9 years. The learned Counsel next referred to another document Ex. AAA/43 which is a chart giving the number of man-days employed by each contractor every month in the Construction Department. Some correspondence was also referred to covering Ex. AAA/26 to Ex. AAA/32, besides the oral evidence adduced in this connection. A reference in particular was made to the evidence of Shri Lalitraj Thakurai, one of the contractors, who produced Attendance Register for the year 1951. Shri S. K. Basu referring to this Register maintained that the average number of workers with this contractor was between 350 to 400 in the years 1950 and 1951.

On the other hand the argument of Shri N. M. Das Gupta, the learned Counsel for the Contractors was short and simple. He contended that the contractors themselves are not permanent although they are registered. And furthermore they are not the contractors of Assam Oil Company exclusively but also work with other firms and have Government contracts. The argument precisely was that in the absence of any assurance by the Company that the contractors are to continue as permanent contractors it was not in the fitness of things to give a higher status to the labour than the one which the employer himself holds. Reliance was placed on the contract deed Ex. 35 and on the strength of this document it was contended that the contracts are given for a specified work and when it is finished

the labour is also dissolved. Ex. 35 is a specimen contract deed which is drawn between the Assam Oil Company and the contractors. The general conditions of contract including the definitions are embodied in 23 paragraphs. Paragraph 22 reads as follows:

> "The contractor shall maintain work executed under contract including any additional work that they may be ordered for 12 calendar months from the date of certified completion by the Engineer and shall make good any defects, shrinkages, settlements, or other faults arising in his work, of which the Engineer shall be the sole Judge until the expiry of this maintenance period."

The other contention raised by Shri Gupta is that at one time it so happens that a contractor has a building work but another time the same contractor gets earth cutting work and in these circumstances the same labour cannot remain intact and must vary according to the nature of the work. Reference was made to WW/66, the Union's own witness, who deposed that when building begins the earth cutting labour becomes superfluous. It was concluded that for all practical purposes the labour is casual one although the same persons come up for work and are engaged but the labour cannot be given a permanent status as asked for for want of the permanence of work itself and the status of the contractor himself as a permanent contractor. Shri Gupta also submitted that in the determination of the points of dispute between the contractors labour and the contractors it may be noted that some of the demands made in the Charter of Demands dated 8th November 1950 (Ex. AAA) were either not pressed before the Conciliation Officer and some were settled under Section 19(2) of the Act and as such these demands should not form the subject of adjudication.

Now on merits the documentary evidence relied upon by Shri S. K. Basu may have its own value but when read in the light of the contract deed and the actual status of the contractors as argued by Shri N. M. Das Gupta, it becomes clear that although the contractors of the company are registered contractors and they have been getting work for th[illegible] last o many years from the Company; yet they also work on contract basis w[illegible]th other concerns i.e., railway and Government etc. and are not working exclusively [illegible]for Assam Oil Company. It is one thing to say that a contractor is a registered contractor but it is a different matter as to whether he is a permanent contractor. Permanence by itself means that one works without break and cannot be removed. Now it is expressly laid down in Ex. 35 the contract deed that the work given to a contractor is for 12 months and a period is also specified for making up the deficiency. We are also uncontroversial ground so far the nature of work goes *viz.*, that the work is not of one type and a contractor may have a construction work in Building Department and at another time for clearing the jungle area by the requisition of labour. This is, of course, in evidence, as shown from the Attendance Register of EW-14 Lalitraj Thakurai that same workers continue to work for months together if not for years. The difficulty however lies in the fact that contractors labour is not a labour which is occupied at all times. The labour engaged in building construction, on the completion of a certain contract must also come to close when that work is finished. It is a different matter that the same workers may again be engaged after some time at other work given to the contractor and sometimes they may be sent from Assam Oil Company to other work say railway or tea garden, as deposed by some of the witnesses. In these circumstances, the position of the contract labour obviously is not of permanent nature although in practice and by mutual good relations a large number of workers continue to work with a particular contractor. They are admittedly daily-rated and are paid for the work and for the days that they actually work. To treat them as permanent after six months or one year as claimed by the Union and then not to give them work because there is no work to give would lead to absurdity. It is also in evidence as deposed by EW-14, on whose statement reliance was placed by the Union side also that workers leave for their home and come back sometimes after several months as this labour admittedly is not local and is imported from outside. Under such circumstances, it is not at all possible to treat the contractors labour as permanent employee or to make any classification as to who is permanent and who is temporary, owing to the very system of contract labour. This system no doubt is a relic of the past and has its disadvantages and serious defects because it enables the principal employer to escape from the salutory provisions of Labour Acts especially the Factories Act, Payment of Wages and other benefits which are available to regular permanent labour. But the system has been sufficiently entrenched in almost all big industrial concerns on account of the fact that immediate employment at short notice for odd works, when speedy execution is necessary is not available and such works are entrusted to contractors. At any even whatever may be the ground

until and unless the much maligned system exists, this Tribunal under the Industrial Disputes Act has no power to abolish it. The result is that notwithstanding of the discriminatory treatment and consequent disabilities and deprivations of contractors labour, the demand for treating them as permanent or as a matter of fact giving them the status of Company's direct employees cannot be met. The same is rejected.

Issue No. (2).—(a) Classification of all permanent, temporary and casual employees as unskilled, semi-skilled, skilled and highly skilled according to their nature of work, skill, reponsibility, risks involved, qualifications and other factors.

(b) Status of all these employees to be Company's employees with same scales of pay, grades and service benefits as other employees of the Company.

In the light of the finding given in the first issue, the question of classification does not arise. Of course, the contractors labour is already being treated on the lines adopted by the Assam Oil Company when the requisition is made from contractors for the supply of labour as unskilled, semi-skilled or skilled. The demand of CLU is that all labour in the employment of contractors be classified in the light of the argument made in Assam Oil Company labour case under issue No. 31. Reference was made to Ex. AAA/25 which gives a picture of work and the statement of WW/38. In the case of Assam Oil Company labour my finding under Issue No. (21) is that classification is not possible and recommendation was made for setting up an advisory committee consisting of the representatives of both sides for necessary change in the classification but I don't think that it applies in the case of contractor's labour. The reason is simple that they are not engaged on permanent basis as said above. Part B of issue No. (2) is to grant status to contractor's labour treating them on the lines of the Company's labour, with regard to pay and other service benefits. This part of the issue seems to be redundant inasmuch as separate issues regarding scales of pay grades and service benefits have been framed, and will be dealt with *infra*.

Issue No. (3).—Revision of pay scales for all categories of employees according to the specific demand made by the Union in its Annexure No. 2(a).

Shri Basu arguing on behalf of CLU referred to the statement of WW/38, WW/67, WW/68, WW/70, WW/72 and contended that contractors in point of fact are Company's supervisors and the actual work is that of the Company. Reference was made also to some documentary evidence Ex. AAA(2) whereby a demand was made for the same wages for contractors labour which are paid to the Company's employees. In the course of argument on this issue it was also claimed incidently that the status of the contractors labour and that of Company's employees should be same. Some authority was also cited in this respect but as observed above in Issues Nos. 1 & 2 this demand has no merit on the practical side on account of the clear distinction in the employment of contractors labour. Shri Das Gupta in reply to this argument retorted that it was again begging the question of the abolition of contractors which is not before the Tribunal. Coming to the real demand *viz.* revision of pay scales, which is the one important demand in the case the argument of Shri Das Gupta on behalf of the contractors was only this much that the contractors cannot pay more than what they get and they could pay if they get more from the Company. The position hardly presents and complication because in actual practice what happens is that the Company has got a number of registered contractors whenever any extra work say construction of bungalows, earth cutting, clearing of jungles and such allied work is to be done they call upon a contractor to supply labour instead of getting it done by their own labour. In this supply the workers are paid according to the nature of their work *i.e.* if one is unskilled he will be paid according to that scale and if an Artisan is engaged he will be paid as such. The daily wages paid to contractors labour are the same and when increase was made by the prior award in the scales of daily wages, the same increase was allowed by the Company also to the Labour working through contractors. What it comes to exactly is that it is the Company who pays to the workers through the contractors and it was on this hard fact that Shri Basu maintained that contractors labour is actually that of the Company. Be that as it may, until and unless the system of contract labour does not go, which in other words means the decasualisation of labour to be brought about through the intervention of Government or by direct negotiation, the Tribunal shall have to treat this labour as contractors labour.

In the matter of wages of course they will get the minimum increase in the scale of wages which the Company's workers are allowed by this award. The result is

that the minimum revised scale allowed in part I of the award in Issue No. (1) to the daily rated workers of Assam Oil Company Ltd. will also apply to the contractors labour. It may be made clear that the contractors labour is not treated as permanent and as such the increase in the scale of their wages shall be made according to the existing method and procedure. But in other words, they constitute casual labour and would get wages according to the revised *minimum* scale of unskilled, semi-skilled or skilled as they happen to be. The addition will be only in minimum of the scale and not by yearly increment as laid down in the case of the Company's direct employees. Of course if any one is already getting more he shall not be staggered or brought down. The case of monthly rated employee of the contractors was not agitated before me and it appears that their number is not large. In case, any change is to be made in the agreement of the contractors in the applicability of revised scale to their labour it is for the contractors to bring it about with the Company. In the result, the contractors are directed to give effect to the revised scales of wages allowed in the case of Assam Oil Company Labour to their labour also henceforward in the manner explained above. The direction shall be carried out within one month from the date of publication of the award and shall apply to all the workers.

Illustration :—Unskilled not less than..Rs. 1/4/- per day
Semi-skilled —do— ..Rs. 1/10/- ,,
Skilled —do— ..Rs. 2/6/- ,,

Issue No. (4).—Increase Dearness Allowance according to the increased cost of living compared with the pre-war prices.

This demand is for increased Dearness Allowance in view of the rise in the cost of living. Both the Counsel relied upon the arguments already made in the main dispute between Assam Oil Company and Assam Oil Company Labour Union. Shri S. K. Basu also referred to the statement of WW-67 in particular and argued that contractors labour as compared with Assam Oil Company Labour are at great disadvantage and their plight is worse. Reference was made to Ex. AAA/44 in regard to the rise in the cost of living. This exhibit is a statement giving the average prices of vegetables and other food articles prevailing in Digboi market in the year 1949, 1950 and 1951. Shri N. M. Das Gupta on behalf of the contractors submitted that the evidence already produced on behalf of the Company in the matter of Dearness Allowance be adopted. In view of this position taken up by both the Counsel it would serve no useful purpose to reiterate the same arguments or to discuss the evidence once again. Furthermore as the wages and Dearness Allowance of the contractors labour also come from the Company. the contractors labour will also get the benefit of revised scale in the Dearness Allowance according to the existing procedure and method prevailing in contractors labour in the matter of wages and Dearness Allowance. It may be made clear that as the contractors labour is not permanent their scale of Dearness Allowance would be the minimum scale according to their classification as unskilled, semi-skilled or skilled when put on work in the employment of contractors, as observed and directed in the matter of revised scales of pay in issue (1) above of Part II.

Issue No. (5).—Maintenance of Ration shops by the employers under the supervision of a Joint Committee with cost of maintenance fully borne by employers.

Shri Basu in support of this demand relied upon the statements of WW/67, WW/68, WW/72, WW/74 and WW/75 wherein they have stated the difficulties of ration supply experienced by contractor labour and the prices prevailing in the market to which they resort. Reference was also made to documentary evidence comprising of various letters Exs. AAA/1, AAA/8, AAA/33, AAA/21, AAA/22 and AAA/24 exchange between the parties in connection with the opening of ration shop. It was also submitted that Digboi is not a rationed area and the co-operative society working is not open to public. Reference was made to the statement of Shri Lalitraj Thakurai (EW-14) in this respect.

Shri Gupta in reply argued that the matter was discussed before the Conciliation Officer and reference was made to Assam Government at Shillong as borne out by correspondence Ex. AAA/1. The learned Counsel also referred to the statement of WW/74 and WW/16 wherein they have stated that the workers get their ration from the Government ration shop. Finally, it was urged that the demand does not constitute industrial dispute as it is neither a condition of service nor any term of employment; and the contractors cannot afford to set up their own ration shops for want of continuous work. Now as borne out from Ex. AAA series—(correspondence)—and the conciliation proceedings before the Conciliation

Officer a certain agreement was arrived at between the parties which was exhibited AAA/33. In this agreement clause 3 relating to ration shop reads as follows :

> "It is further agreed that the rations as and when received from the Government will be distributed through a shop of employers under the joint supervision of contractors association and the Union."

Clause 4 further states that Contractors Association have agreed to furnish the list of all employees with their dependants to the Supply Superintendent, Dibrugarh for the purpose of ration. In view of these terms it seems clear that ration was to be received through Government for distribution and the demand now made does not fit in with the terms of the agreement and must fail. I would however recommend that effort should be made in Government circles that labour should get ration through Government either from Government shop or by some other arrangement in consonance with the terms of the agreement.

Issue No. (6).—Same leave benefits as granted to the workmen on the Company's register.

The demand made by C.L.U. is for the grant of Casual Leave on the lines of Assam oil Company Labour Union demand. The demand naturally is made on the assumption that contractors labour should be treated at par with the Company's direct labour ; but the distinction is there and one cannot blink over it as held in the discussion in Issue Nos. (1) and (2). Reliance was placed on the oral evidence adduced by the labour and reference was made in particular to the statements of WW/66, WW/68, WW/69, WW/70 and WW/74. This evidence at best constitutes a demand of workers which again is to be considered in the light of hard facts and circumstances as exist. Now in regard to leave it is stated in Ex. AAA/33 that all workers shall be paid for the Independence Day at the rate of Rs. 2/10/- and that this would be for this year *viz.* 1950. At any rate no agreement was reached on the point of leave.

Shri Das Gupta in reply contended that the question of leave does not arise in the case of casual labour in the light of the principle 'no work no pay'. It was next argued that the contractors do not get any leave wages from the Company for their workers and the question of leave with pay is beside the point. Now the aspirations of contractors labour can be well appreciated but so long the present position exists their demands on the lines of regular employment cannot materialise and in the light of the finding given on Issue No. (1), I am constrained to hold that the question of leave does not arise.

Issue No. (7) and (8).—Provident Fund its management and rules and gratuity or allowance on termination of service.

Both these demands for the introduction of the scheme of Provident Fund and gratuity obviously are conceived on the assumption that they are permanent employees. In view of the finding on Issue No. (1) based on stern actualities of the situation the demands cannot be considered and are rejected

Issue No. (9).—Maintenance of service register showing all necessary particulars about designation, pay, classification, increment and length of service.

It was stated that Registers are being maintained and EW-14 actually produced the Attendance Registers in the course of his statement to which reference has already been made. Shri Das Gupta also contended that the Union did not press this demand before the Conciliation Officer and this assertion was not denied, by the Union side. The demand needs no adjudication.

Issue No. (10).—Enforcement of the principle of seniority in the matter of employment and retrenchment.

Shri S. K. Basu in support of the demand submitted that it is absolutely necessary in the case of contractors labour that the principle of 'last come first go' be applied in the matter of laying off and in re-employment. Shri Das Gupta in reply averred that although their labour is casual yet this principle is being observed and on this assurance the demand was not pressed. The result is that after lay off *viz.* that when work is finished and contractors labour is discharged old workers will be given preference for the purpose of new employment over new recruits.

Issue No. (11).—(a) Maternity benefit and free medical aid to all female employees and their dependents. (b) Free medical aid to all other employees and their dependents.

This demand also is on the lines of Assam Oil Company labour that contractors should also provide medical aid to their labour and maternity benefit to their women workers. Such benefits are necessary no doubt but the difficulty is that the labour is not treated as a regular permanent labour. This demand furthermore was discussed before the Conciliation Officer as borne out from Ex. AAA/6 produced by the Union themselves and in view of the fact that the matter was referred to Assam Government under the Factories Act to appoint Certifying Surgeon the Union did not press. Shri Das Gupta reiterated the same argument that in the first place contractors are not in a permanent position to set up their own dispensaries or employ doctor for medical aid as Assam Oil Company does and secondly the contractors labour can also avail the medical benefit from Company's hospitals. Finally it was submitted that the demand was not pressed before the Conciliation Officer and cannot be adjudicated upon. In the circumstances, the demand is negatived.

Issue No. (12).—Provision for free primary and secondary education for the employees' children or payment of school fees or adequate educational allowance to employees by their employers.

The demand was pressed on the same lines stated above and was resisted also on the same plea *viz.* that the demand does not amount to industrial dispute because it is not a part of conditions of service and secondly the contractors are not in a position to open schools of their own, which facility is already afforded by the Company at Digboi. Be that as it may this demand is on the lines of other benefits and the contractors cannot be called upon to make any provision in view of the circumstances described above. The demand is negatived.

Issue No. (14).—Full wages for overtime work for 1½ hour on every Saturday

Both sides adopted the arguments made in the case of Assam Oil Company and their workmen and the finding would also be the same as given in Assam Oil Company labour case *viz.*, the demand is negatived.

Issue No. (14).—Full wages for overtime work for 1½ hour on every Saturday since February 11, 1949.

The demand of the Union is for the payment of full wages for overtime work since 11th February 1949 for 1½ hour on every Saturday. Shri S. K. Basu referred to the prior award of Mr. Justice Varma, pages 114-115 which deal with loss of earning on account of working hours. Shri Das Gupta on the other hand contended that contractors case was not before Mr. Justice Varma and the demand is misconceived. No other evidence was placed on the record excepting certain resolutions sent to contractors regarding working hours. The demand calculates to claim arrears retrospectively and in view of the fact that contractors case was not before the first Tribunal it is not understandable as to how this claim was pushed in. It also appears that this matter was not taken up before the Conciliation Officer in the course of conciliation proceedings. In these circumstances the demand appears to be misconceived and is rejected.

Issue No. (15).—Free periodical medical examination of all employees engaged in hazardous occupations.

This demand also is made on the line of Assam Oil Company Employees Union although contractors labour is concerned mainly with construction and earth cutting work etc. Shri Das Gupta contended that this issue was also not pressed before the Conciliation Officer, as the jobs of contractors labour involve no hazard. Even assuming that some of the contractors labour is engaged in construction work where they might incur some hazard, the real point is as to whether contractors can be called upon to provide medical aid or periodical examination on the lines of Assam Oil Company. Now the contractors' status by itself, as explained above in the discussion of first issue, is not permanent and the actual position is that the Company gets some subsidiary labour through the contractor for certain work. It is a different matter that this system is undesirable and be altogether done away with and the whole labour should come under the direct recruitment of the Company, but so long it is not dispensed with, to ask for all sorts of benefits on the lines of Assam Oil Company is meaningless. For all these reasons the demand has no merit in the existing circumstances and must fail.

Issue No. (16).—Framing of Standing Orders as those of the Company.

In support of this demand reference was made to Ex. AAA/8 and it was argued that according to the agreement of 1949 the contractors were bound to frame their own Standing Orders and constitute Works Committees but they have not done uptil now. On the other hand Shri N. M. Das Gupta contended that a draft of Standing Orders was submitted to the Regional Labour Commissioner but the same was not approved and subsequently nothing happened. It was also averred that this demand was not pressed in the statement of claim itself and requires no adjudication. On the perusal of the statement of claim, I find at page 17 under Issue No. (13) the following:

"*Standing Orders to be properly framed.*

The Union refers to the report of the Conciliation Officer on this issue and *does not press for it now.*"

In view of this position taken in the claim the issue requires no adjudication.

Issue No. (17).—Proper maintenance of Attendance Registers with full particulars including duration of work, over-time, etc.

Shri N. M. Das Gupta did not oppose the demand and stated that in point of fact the registers are being maintained and shall be maintained. In other words the demand is conceded and it is directed that proper Attendance Registers be maintained if they are not done by this time.

Issue No. (18).—Regular payment of wages on or before the 10th of each month.

This demand was also conceded. I would therefore direct that wages be paid regularly on or before the 10th of each month by the employer.

Issue No. (19).—Timely issue of proper pay slips on a printed form showing full particulars and signed by a duly authorised person.

The demand was not pressed before the Conciliation Officer but Shri Basu pleaded the desirability of issuing of pay slips by an authorised agent. Shri N. M. Das Gupta agreed and I direct the issue of proper pay slips accordingly.

Issue No. (20).—The question of giving signatures or thumb impressions at the time of payment.

The demand was not pressed because the procedure of giving signature or thumb impression has already been adopted.

Issue No. (21).—Payment at the same time of wages and over-time wages.

The demand was not pressed and Shri N. M. Das Gupta states that payment of overtime wages is made at the same time.

Issue No. (22).—Payment of unpaid wages on any day during office hours or by postal orders to applicants.

The demand exactly is that the wages be paid only during office hours or by postal orders to the labour and not otherwise. Shri Das Gupta contended that this demand was not pressed before the Conciliation Officer and it would be difficult to obtain postal orders for each labourer by the contractor. It appears that labour experiences some difficulty in collecting their wages after office hours and the demand was based on this hardship. The other aspect of the question is that if payment be made by postal orders it would also be inconvenient for the labour to get them cashed from the post office, and furthermore, this process would engender estrangement between the labour and the employer, which should be avoided. The payment of wages should therefore be made during office hours as a normal procedure, and I direct accordingly.

Issue No. (23).—Regular issue of a proper leave certificate for any leave with or without pay.

The question of regular issue of leave certificate does not arise when leave is not granted with pay.

Issue No. (24).—Timely payment of workers' wages and other dues at the time of their going on leave and on the very day of termination of service.

The demand was not pressed as Shri Das Gupta agreed and stated that payment of wages is always made when any worker proceeds for home or his service is terminated, and the practice shall continue. This finishes with the various issues

and findings in both the disputes between Assam Oil Company and Assam Oil Company Labour Union as well as Contractors and C.L.U.

Lastly it becomes my pleasant duty to thank the learned Counsel of both sides and the representatives of parties for the assistance that they gave in the determination of this onerous task. It would moreover not be out of place to speak of the impression which the hearing of this long drawn dispute has left on my mind; and knowing that in these days of unceasing strife and struggle, precept or advice are scarcely heeded, I do say a word.

Generally speaking the conflict between capital and labour is that labour wants security and decent living and management needs good production and profitable enterprise. In this desire, to my mind, they can never co-operate by the spirit of antagonism and constant opposition which I have noticed during these proceedings. It appears, the approach of labour is to snatch as much power as possible and secure as much share in profits as coveted; and the management wishes not only to hold the power tenaciously but also resents to share the profits. This process naturally runs afoul of co-operation and harmony and it is necessary that some positive approach be found out objectively for mutual understanding.

Now it is a truism that real contest leads to compromise potentially while exaggerated notions widen the gulf. What I would, therefore, say to the employees is that the days of feudal attitude of mind are over and the sooner it is realised that labour is partner in production and be exploited on the basis of common adventure the better. So far the labour is concerned I cannot possibly do better than to remind them of the precious advice given by Mahatma Gandhi to the workers of Ahmedabad Textile Labour Association which have a permanent value for all interested in trade union work. The advice was this:

> "The workers or their leaders should not exaggerate their demands, they should study the pros and cons of the case carefully before formulating demands. They should always be ready for correction if the opposite party is able to convince that the workers are in the wrong; and that they should not bear ill will to their employer and their officers."

NOW, THEREFORE, THIS TRIBUNAL MAKES ITS AWARD IN THE AFORESAID TERMS THIS THE 17TH DAY OF JULY 1952.

K. S. CAMPBELL-PURI, *Chairman*,

Central Government Industrial Tribunal, Calcutta.

[No. LR-2(305).]

N. C. KUPPUSWAMI, Under Secy.

PRINTED IN INDIA BY THE MANAGER GOVT. OF INDIA PRESS, NEW DELHI
AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1952